

EXHIBIT 4-A

In the Matter Of:

RONALD JEFFREY PRIBLE vs LORIE DAVIS

4:09-cv-01896

KELLY SIEGLER

October 17, 2017



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RONALD JEFFREY PRIBLE vs LORIE DAVIS

October 17, 2017

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J0659784 eb

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RONALD JEFFREY PRIBLE, JR. *
Plaintiff *

VS. * CIVIL ACTION NO.
* 4:09-cv-01896

LORIE DAVIS, DIRECTOR, *
TEXAS DEPARTMENT OF *
CRIMINAL JUSTICE, *
INSTITUTIONAL DIV. *
Defendants *

VIDEOTAPED DEPOSITION OF KELLY SIEGLER

Date Edith A. Boggs, CSR

10-17-17 HOUSTON, TEXAS

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DEPOSITION OF KELLY SIEGLER

DEPOSITION AND ANSWERS of KELLY SIEGLER, taken
before Edith A. Boggs, a certified shorthand reporter in
Harris County for the State of Texas, taken at the law
offices of Hilder & Associates, 819 Lovett Boulevard,
Houston, Texas, on the 17th day of October, 2017,
between the hours of 9:05 a.m. and 6:23 p.m.

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A P P E A R A N C E S

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AND

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By: Tina J. Miranda, Esquire
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Houston, Texas 77002

By: James Eloi Doyle, Esquire

ALSO PRESENT:

Mr. Dwayne Smith, Videographer

REPORTED BY:

Ms. Edith A. Boggs

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PROCEEDINGS

THE VIDEOGRAPHER: Going on the record.

Today's date is October 17th, 2017. The time is 9:05 a.m.

This marks the beginning of file number 1 in the deposition of Kelly Siegler in the case of Ronald Prible versus Lorie Davis, Case No. 4:09-cv-01896 in the United States District Court for the Southern District of Texas, Houston Division.

The deposition is taking place at Hilder & Associates, 819 Lovett, Houston, Texas.

The videographer today is Dwayne Smith of Esquire Deposition Solutions. The court reporter is Edie Boggs.

Would all present counsel please voice identify yourselves and say who you represent.

MS. SCARDINO: Gretchen Scardino for petitioner, Ronald Jeffrey Prible.

MR. DOYLE: James Doyle for Kelly Siegler.

MR. RYTTING: James Rytting for petitioner, Ronald Jeffrey Prible.

MS. MIRANDA: Tina Miranda for the director.

MR. D'HEMECOURT: George d'Hemecourt for the director.

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1 MS. WEAVER: Kelli Weaver for the director.

2 THE VIDEOGRAPHER: Would the court reporter
3 please swear in the witness.

4 KELLY SIEGLER
5 was called as a witness and, being first duly sworn by
6 the notary, testified as follows:

7 EXAMINATION

8 Q. (BY MS. SCARDINO) Ms. Siegler, my name is
9 Gretchen Scardino. We haven't met before. I represent
10 Mr. Prible in this matter. You've testified in a
11 deposition previously, have you not?

12 A. I have not.

13 Q. You have not? Okay. Just in court, you've
14 testified as a witness?

15 A. Yes.

16 Q. And most recently in Wisconsin, I believe?

17 A. Oh.

18 Q. Last week?

19 A. That was a deposition. Well, it was a hearing.

20 Q. A hearing. Okay. What was the name of that
21 case?

22 A. I don't know the style of the case.

23 Q. Okay. What was the defendant's name?

24 A. It wasn't a defendant.

25 Q. Was it a civil matter?

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1 A. It was a dispute between an employee and his
2 boss, whatever you want to call that.

3 Q. And in what capacity were you testifying?

4 A. On behalf of the employee.

5 Q. Okay. Who -- what -- you don't recall the name
6 of any of the parties to that matter?

7 A. The name of the employee is Steve Bowers,
8 B O W E R S.

9 Q. Is that the only time you've testified as a
10 witness in court?

11 A. No.

12 Q. What other cases have you testified in, if we
13 could just list them?

14 A. In my capacity as a prosecutor.

15 Q. Uh-huh. Yes.

16 A. A long time ago in a competency hearing, on
17 little matters having to do with various cases and in
18 the David Temple case.

19 Q. And the David Temple, case you testified in
20 2015, correct, in the state habeas hearing?

21 A. '15 and '16, I think.

22 Q. Okay. And you testified truthfully in that
23 case?

24 A. Yes.

25 Q. And the murder of Linda Temple occurred in

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1 1999, correct?

2 A. Yes.

3 Q. And that was the same year as the murders that
4 we are here about today, the Tirado/Herrera murders?

5 A. Yes.

6 Q. Okay. And Mr. Prible -- you tried Mr. Prible
7 in 2002, and you indicted Mr. Temple in 2005, correct?

8 A. Yes.

9 Q. Okay.

10 MS. SCARDINO: I'm going to attach as an
11 exhibit to Ms. Siegler's deposition certain excerpts
12 from her testimony in the David Temple matter. Those
13 will be Exhibits 140 through 144.

14 MR. DOYLE: Do you have a copy for me?

15 MS. SCARDINO: I do. I have copies for
16 everyone. Here you go.

17 MR. DOYLE: As I understand, the parameters
18 of this inquiry have to do with the Prible case,
19 correct?

20 MR. RYTTING: Sir --

21 MS. SCARDINO: The -- the inquiry -- or the
22 parameters of the deposition have to do with anything
23 related to Prible, Herrero, the Hermilio Herrero case,
24 and this goes -- the David Temple case goes to her
25 credibility. So, for that reason, we're putting in --

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1 MR. DOYLE: I'm -- my question is this has
2 to do -- I think the judge indicated that it had to do
3 with a ring of snitches, is that the point?

4 MS. SCARDINO: Yes, it is --

5 MR. DOYLE: Okay.

6 MS. SCARDINO: -- both of which were used
7 in those two cases.

8 MR. DOYLE: What's that?

9 MS. SCARDINO: They were both used in the
10 Prible and the Herrero cases.

11 MR. DOYLE: And then what does it have to
12 do with the --

13 MR. RYTTING: Sir --

14 MR. DOYLE: -- Temple case?

15 MR. RYTTING: We need to call the Court.

16 MS. SCARDINO: It has everything. You'll
17 see -- you'll see every --

18 MR. DOYLE: Well, if you could just tell me
19 what the rel -- what the --

20 MS. SCARDINO: What the relevance is?

21 MR. DOYLE: Yeah.

22 MS. SCARDINO: Well, Ms. Siegler testified
23 in the Temple case as to her understanding --

24 MR. RYTTING: You do not need to explain to
25 him the relevance of that case.

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1 And your position here is not to ask
2 questions like that. If the --

3 MR. DOYLE: Ms. Scardino -- Ms. Scardino,
4 if you --

5 MR. RYTTING: Off the record.

6 MR. DOYLE: -- if you could lead the case.

7 MR. RYTTING: Please go off the record.

8 MR. DOYLE: No, we're going to stay on the
9 record.

10 MR. RYTTING: That is not your call.

11 MR. DOYLE: You cannot --

12 MS. SCARDINO: Wait. Wait one second. I
13 want to stay -- I want to stay on the record, and I want
14 to say I am deposing Ms. Siegler --

15 MR. DOYLE: And I --

16 MS. SCARDINO: -- that your questioning is
17 improper.

18 MR. DOYLE: No, I --

19 MS. SCARDINO: If you need to go and look
20 at the pleadings that we've pled in this case and you
21 can see what exactly the parameters of this deposition
22 are but we have a lot of latitude here. This is a
23 discovery deposition.

24 MR. DOYLE: I understand. And what I asked
25 you was what the relationship was and --

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1 MS. SCARDINO: And I don't need to tell you
2 what the relationship is but I will say that her
3 credibility is always going to be at issue.

4 MR. DOYLE: So, you think that opens it up
5 to any case that she's been involved with, is that the
6 point?

7 MS. SCARDINO: James, do we need to call
8 Judge Ellison?

9 MR. DOYLE: No, I'm just asking you.

10 MR. RYTTING: You're not allowed to ask
11 her.

12 MS. SCARDINO: I'm going to continue with
13 my --

14 MR. RYTTING: That's why we're -- that's
15 why we're objecting. Do you understand? You are not
16 allowed to ask. You are to sit there and make only
17 objections based on --

18 MR. DOYLE: Ms. Scardino, would you please
19 ask your co-counsel to restrain himself?

20 MR. RYTTING: Sir, you need to restrain
21 yourself.

22 MS. SCARDINO: I'm going to continue.

23 Q. (BY MS. SCARDINO) Ms. Siegler, what did you do
24 to prepare for your deposition today? Did you review
25 the trial transcript in this case?

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1 A. No.

2 Q. Did you review your work product notes?

3 A. No.

4 Q. You didn't look at your file at all?

5 A. No.

6 Q. Okay. You met with the Attorney General's
7 office yesterday, correct?

8 A. Yes.

9 Q. How long was that meeting?

10 A. About two hours.

11 Q. And what was discussed at that meeting with the
12 AG's office?

13 A. They told me what their function is in this
14 proceeding and explained that to me.

15 Q. Over two hours, did you speak with them about
16 the specifics of any of the prior depositions in this
17 matter?

18 A. No.

19 Q. Have you looked at the deposition transcripts
20 of Mr. Wisner?

21 A. No.

22 Q. Have you looked at the deposition transcript of
23 Mr. Bonds?

24 A. I have not.

25 Q. Did you speak with the Attorney General's

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1 office about the substance of the deposition of
2 Mr. Bonds, Mr. Wisner or Michael Beckcom?

3 A. I have not.

4 Q. Okay. You were a prosecutor for the DA's
5 office from 1989, is that when you began there?

6 A. I began as an intern in 1986.

7 Q. When you were still in law school?

8 A. Yes.

9 Q. And when did you begin working there as an
10 attorney?

11 A. 1987.

12 Q. And when you began to work there as an
13 attorney, I -- I suppose you were just an assistant
14 district attorney at that time? Was that your title?

15 A. Yes.

16 Q. And through the years, you progressed until you
17 eventually became head of Special Crimes; is that
18 correct?

19 A. Yes.

20 Q. Okay. What was your role at the district
21 attorney's office in 1999, your title?

22 A. It changed in '99. Which part of '99?

23 Q. April, 1999.

24 A. At that time, I think I was still assigned as
25 the chief prosecutor in Ted Poe's court.

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1 Q. And by the time you tried Mr. Prible in 2002,
2 what was your title at the DA's office?

3 A. From '99 until 2002, it changed a couple of
4 times. I'm not sure when you're talking about.

5 Q. Okay. Well, why don't you take me through the
6 various changes. You started out in '99, you were the
7 chief prosecutor in Ted Poe's court. From there, how
8 did your title change?

9 A. After I was the chief prosecutor in Ted Poe's
10 court, I then got transferred to major crimes in Special
11 Crimes in -- toward the end of '99, I think.

12 And then at some point, I got made the
13 division chief of major crimes in Special Crimes.

14 And then at some point, I got made the
15 bureau chief of Special Crimes.

16 Q. And that was all between 1999 and 2002?

17 A. I don't remember.

18 Q. Okay. By 2002, were you, at that point, the
19 division chief of major crimes in Special Crimes?

20 A. I was also a bureau chief of the misdemeanor
21 division, I just remembered, too. I don't know where I
22 was. I don't remember the timing of those.

23 Q. Okay. But at some point, you became the
24 division chief of Special Crimes and those were the --
25 that was the division where you handled a lot of cold

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1 cases; is that correct?

2 A. I was the division chief of major crimes in
3 Special Crimes and then the bureau chief of Special
4 Crimes.

5 Q. Okay. So, when you prosecuted Mr. Prible in
6 2002, you had been on the job for approximately 25
7 years; is that correct?

8 A. No.

9 Q. 15 years?

10 A. Yeah.

11 Q. I can't do my math. 15 years.

12 Okay. You met Mr. Bonds -- Mr. Johnny
13 Bonds in 1989 when you were a new prosecutor, right?

14 A. He was new to the office. I wasn't new then.

15 Q. Okay. He came to the office in 199 -- '89?

16 A. Yes.

17 Q. Okay. And you -- you all worked closely
18 together in Special Crimes, correct?

19 A. Correct.

20 Q. He was your primary investigator, right?

21 A. There were two, but yes.

22 Q. He was the main -- he was your main right-hand
23 man?

24 A. There were two.

25 Q. Okay. Who was the other one?

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1 A. Woody.

2 Q. Okay. What was Woody's last name?

3 A. Woodruff.

4 Q. Okay. And you all -- you and Mr. Bonds worked
5 together at the DA's office until you left in 2008, or
6 had he previously left?

7 A. I think I left first.

8 Q. You left first, he was still there?

9 A. I think so.

10 Q. Okay. So, from approximately 1989 to 2008, you
11 worked very closely with Mr. Bonds on a lot of your
12 cases?

13 A. It was off and on. He would be transferred
14 around, and I would be transferred around. So, it
15 wasn't consistently the whole time, no.

16 Q. Okay. When you did work on a case together,
17 you would oftentimes accompany each other to witness
18 interviews, correct?

19 A. Define often.

20 Q. Well, more often than not?

21 A. No.

22 Q. No? How often would he accompany you to a
23 witness interview?

24 A. I did most of my witness interviews by myself.

25 Q. You did?

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1 A. Yeah.

2 Q. And would you take notes when you did those
3 witness interviews?

4 A. No. I didn't have time. I was talking.

5 Q. You didn't take any notes after you left the
6 interview to remember what you had spoken with the
7 witness about?

8 A. Maybe sometimes.

9 Q. But most of all -- most of the time, you just
10 kept it up in your head?

11 A. I tried.

12 Q. And you took Mr. Bonds out of retirement a few
13 years ago to work on your reality television show; is
14 that right?

15 A. Yes.

16 Q. Okay. And what's his role on that show?

17 A. He's an investigator.

18 Q. Okay. Just like he was with you back in the
19 DA's office, similar working relationship?

20 A. Correct.

21 Q. Okay. And you've described your work on that
22 show as working miracles. What -- what is -- what do
23 you mean by that?

24 A. We look at the hardest unsolved murder cases
25 there are all across the country and try our best to

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1 solve them.

2 Q. And almost always these cold cases that you
3 work on are based on circumstantial evidence, right?

4 A. Yes.

5 Q. And you like cold cases. I've seen it written
6 that you like working on cold cases. Why is that?

7 A. They're difficult. They're a challenge.

8 Q. What about your skill set makes you well suited
9 to working on cold cases?

10 A. I don't think there's anything special about
11 me. I just think that cold cases are a challenge and
12 cases that ought to be worked on.

13 Q. Well, you're very detailed oriented, right?

14 A. I hope most lawyers are.

15 Q. And details matter in circumstantial cases a
16 lot, right?

17 A. Yes.

18 Q. You have to be meticulous, thorough, organized
19 to solve these cold cases, right?

20 A. I think any case you handle as a prosecutor
21 requires the same things.

22 Q. So, is that a yes?

23 A. As I said, I think all cases we work on require
24 the same things.

25 Q. Okay. Require you to be meticulous, thorough

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1 and organized, right?

2 A. On any case.

3 Q. Okay. And in the Temple case, you testified
4 that you won circumstantial -- circumstantial cases by
5 paying attention to detail. That's a true statement,
6 right?

7 A. Yes.

8 Q. Okay. I'm going to show you Exhibit 184.
9 Exhibit 184 --

10 MR. DOYLE: Can I --

11 Q. (BY MS. SCARDINO) I'll give you an opportunity
12 to read it. Yeah, Exhibit 184 is an article from Parade
13 Magazine about your television show.

14 A. I'm going to have a hard time reading this or
15 anything today. I just had eye surgery. I don't have
16 my new glasses. It's going to take me a while --

17 Q. Okay.

18 A. -- because I can't see it.

19 Q. Okay. Well, we can go off the record and give
20 you a chance to read it and then go back on.

21 A. Well, I'll try to read it but it's going to
22 take longer than normal.

23 Q. Okay.

24 Okay. Have you finished reading it?

25 A. Yes.

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1 Q. Okay. And so, in that case -- or in that
2 article, the reader asked how does Cold Justice pick
3 cases, and you say in there, "Living in the real world,
4 we don't have those instruments and equipment and
5 machines. It does not exist in most cases, especially
6 local ones. You have to combat that, and it's very
7 frustrating. It makes me crazy when people say, 'Oh,
8 you've got a circumstantial case.' I'm like, 'What?
9 Circumstantial evidence is a good thing because the
10 thing that solves cases isn't fancy technology. It
11 isn't forensics or DNA coming back that shows who the
12 killer is. Please. That doesn't happen. It's old
13 fashioned hard work done one piece at a time,
14 reinterviewing every witness one statement at a time and
15 one question at a time, putting it all back together
16 again like a good little anal-retentive,
17 obsessive-compulsive, perfectionist nerd. That's what
18 solves cold cases.'" And so, you made that statement?

19 A. I did.

20 Q. Okay. Now, Exhibit 185 is a photograph. It's
21 a still shot from your television show, correct?

22 MS. MIRANDA: Do you have another copy?
23 Thanks.

24 A. Yes.

25 Q. (BY MS. SCARDINO) Okay. And that shows you

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1 looking through your files in one of your cold cases?

2 A. No.

3 Q. What case -- what are you looking at in that
4 picture?

5 A. Are you -- what are you pointing to? All
6 these?

7 Q. All those files.

8 A. Those are props.

9 Q. So, that wasn't actually your file in a cold
10 case, it's just a prop?

11 A. These right here?

12 Q. Uh-huh.

13 A. Those are props. I don't know what they are.
14 I never look at them.

15 Q. Okay. Now, as a prosecutor, your duty was to
16 seek justice, not just to get a conviction, right?

17 A. Yes, ma'am.

18 Q. And there are multiple duties or sources for
19 the duty to seek justice, correct?

20 A. I'm sorry, ask that again.

21 Q. There are multiple sources for the duty to seek
22 justice, one of those is the due process clause of the
23 constitution, correct?

24 A. I don't understand the question.

25 MR. DOYLE: Objection.

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1 Q. (BY MS. SCARDINO) Are there multiple sources
2 for your duty to seek justice under the law?

3 A. I really still don't understand the question.
4 My duty was to seek justice.

5 Q. Okay. And your duty is to follow the due
6 process clause of the constitution, correct?

7 A. Yes.

8 Q. Okay. And you're also bound by the ethical
9 rules set forth in the Texas Disciplinary Rules of
10 Special -- of Conduct, correct?

11 A. Yes.

12 Q. Okay. Specifically, Rule 3.09D, which lays out
13 the special responsibilities of a prosecutor?

14 A. Do you want to read it to me?

15 Q. Sure. Are you familiar with that rule?

16 A. By number, no, ma'am.

17 Q. And if you would like to read this, that's fine
18 but I'm going to go off the record so we don't use our
19 time up.

20 MR. DOYLE: She's going to read whatever
21 documents you give to her.

22 MS. SCARDINO: That's fine.

23 Q. (BY MS. SCARDINO) So, I'll give you Exhibit
24 156, which is a copy of Rule 3.9 -- 09, but we're going
25 to go off the record so you can take your time reading

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1 it.

2 A. No, I don't want to go off the record --

3 MR. DOYLE: I'm not going to --

4 A. -- every time you give me something to read.
5 You had a whole year to do this. You could have given
6 me all these things to read ahead of time.

7 Q. (BY MS. SCARDINO) All of the -- Rule 3.09
8 isn't -- isn't something that you shouldn't be
9 unfamiliar with.

10 A. I'm not saying it's not.

11 Q. Okay.

12 A. I just don't know which rule it is by number.

13 Q. Okay. Well, if we run out of time today, we're
14 going to stay --

15 A. Why don't you just read it to me.

16 Q. Oh, I'm happy to. I thought you wanted to read
17 it. I was giving you an opportunity to read it.

18 Exhibit 156 is Rule 3.09, the Special
19 Responsibilities of a Prosecutor. "The prosecutor in a
20 criminal case shall remain from prosecuting or
21 threatening to prosecute a charge that the prosecutor
22 knows is not supported by probable cause; should refrain
23 from conducting or assisting in a custodial
24 interrogation of an accused unless the prosecutor has
25 made reasonable efforts to be assured that the accused

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1 has been advised of any right to, and the procedure for
2 obtaining, counsel and has been given reasonable
3 opportunity to obtain counsel; shall not initiate or
4 encourage efforts to obtain from an unrepresented
5 accused a waiver of important pretrial, trial or post
6 trial rights; shall make timely disclosure to the
7 defense of all evidence or information known to the
8 prosecutor that tends to negate the guilt of the accused
9 or mitigates the offense and, in connection with
10 sentencing, disclose to the defense and to the tribunal
11 all unprivileged mitigating information known to the
12 prosecutor, except when the prosecutor is relieved of
13 this responsibility by a protective order of the
14 tribunal and, finally, shall exercise reasonable care to
15 prevent persons employed or controlled by the prosecutor
16 in a criminal case from making an extrajudicial
17 statement that the prosecutor would be prohibited from
18 making under Rule 3.07."

19 Are you familiar with this rule?

20 MR. DOYLE: You put it in the -- can I have
21 a copy, please?

22 MS. SCARDINO: Uh-huh.

23 Q. (BY MS. SCARDINO) Are you familiar with this
24 rule?

25 A. Yes.

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1 Q. You also have duties to the people you
2 prosecuted; isn't that correct?

3 A. Yes.

4 Q. You had a duty to comply with the Brady rule?

5 A. Yes.

6 Q. You had the duty not to use false testimony to
7 obtain a conviction?

8 A. Yes.

9 Q. Even if you personally believed that that was
10 the correct result, right?

11 A. I don't understand that question.

12 Q. In other words, the ends didn't justify the
13 means in a criminal prosecution, correct?

14 A. I don't understand that question.

15 Q. I'll restate it.

16 If you felt that a defendant was guilty,
17 you still could not use false testimony to obtain a
18 conviction against that defendant, right?

19 A. Right.

20 Q. Did you take any Brady training while you were
21 at the district attorney's office?

22 A. Yes.

23 Q. And who gave that training?

24 A. It would have either been through the office --
25 interoffice -- intraoffice or from TDCAA.

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1 Q. And who gave the training intraoffice?

2 A. It would have been different every year.

3 Q. Was it a formal workshop that the district
4 attorneys had to sit through or was it just speaking
5 with a supervisor on a case-to-case basis?

6 A. That changed over time.

7 Q. In 1999 through 2002, what was the policy
8 then -- or the training then?

9 A. I don't remember. In the beginning when Johnny
10 Holmes was the DA, we had official training once a year
11 for a certain number of weeks, certain nights of the
12 week, and that would include the ethics and Brady
13 training, and then we quit doing that, and then it was
14 different. It was more random but it was still, you
15 know, every year but I don't remember when it changed or
16 exactly how it changed.

17 Q. When did Mr. Holmes leave the DA's office? Was
18 that prior to 1999?

19 A. It was right around then.

20 Q. Okay. And then Mr. Rosenthal became the DA,
21 right?

22 A. Yes.

23 Q. Okay. Did you ever give Brady training at the
24 DA's office?

25 A. Not that I remember.

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1 Q. Okay. Mr. Wisner, at his deposition, mentioned
2 the district attorney's operations manual that every
3 prosecutor had a copy of. Do you recall this manual?

4 A. Yes.

5 Q. Okay. And that manual was hundreds of pages
6 long, correct, and it addressed all kinds of issues that
7 might arise in your practice as a prosecutor?

8 A. It did.

9 Q. And did you have any role in writing that
10 manual?

11 A. No.

12 Q. Who wrote that manual?

13 A. I don't know.

14 Q. You don't know? Okay. And every prosecutor
15 was required to follow the guidelines laid out in that
16 manual, correct?

17 A. Yes.

18 Q. And would they be subject to termination if
19 they didn't, if they willfully violated any of those
20 guidelines?

21 A. I think that would depend on the circumstances.

22 Q. Okay. Did the DA's office have a policy -- and
23 I'm going back to this time period 1999-2002 --
24 regarding the disclosure of offense reports?

25 A. Yes.

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1 Q. Okay. And in the Temple case, you testified
2 that inconsistent statements of material witnesses fell
3 under Brady and a witness is material if he gets called
4 to testify at trial. Do you recall that?

5 A. No.

6 Q. You don't recall making that statement?

7 A. No.

8 Q. Okay. We can come back to it then in a moment.

9 Okay. Going on to the offense reports,
10 what was the policy about disclosing offense reports to
11 the defense back in 1999-2002?

12 A. The office had an open file policy.

13 Q. And what does that mean?

14 A. For the most part, offense reports were open
15 for the defense to read.

16 Q. Okay. So, let's break that down. For the most
17 part, when were they not available for the offense to
18 read -- the defense to read?

19 A. What does that have to do with the issue we're
20 here for today having to do with the ring of snitches
21 that you claim I manipulated?

22 MS. SCARDINO: Objection, nonresponsive.

23 Q. (BY MS. SCARDINO) I'd like to talk -- ask you
24 again what did you mean for the most part these offense
25 reports were available for the defense to read?

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1 A. I'm not going to answer questions about every
2 case I ever handled.

3 Q. Okay.

4 A. That's not what this deposition is about.

5 Q. So, are you refusing to answer my question?

6 A. Yes.

7 MR. DOYLE: What she wants to know is what
8 the relationship is with the --

9 MS. SCARDINO: And --

10 MR. DOYLE: -- ring of snitches.

11 MS. SCARDINO: And I don't -- and I
12 understand that but I'm not required --

13 MR. RYTTING: Let me --

14 MS. SCARDINO: James, I've got this.

15 I'm not required to -- to explain the
16 reasoning.

17 MR. DOYLE: Well, I understand, Gretchen,
18 and I know you want to get through the deposition.
19 What -- what she's asked you is what is the
20 relationship -- which I think is a fair question -- of
21 that question to this issue that you're inquiring about.

22 MS. SCARDINO: And --

23 MR. DOYLE: Because it has to do with a
24 different case.

25 MR. RYTTING: We've got to stop the

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1 deposition right now.

2 MS. SCARDINO: And I --

3 MR. RYTTING: We need to go off the record
4 right now and call the Court.

5 MS. SCARDINO: Well, let's -- let's
6 actually stay on the record. Let's stay on the record
7 right now.

8 MR. RYTTING: Okay. Let's stay on the
9 record. Let me --

10 MS. SCARDINO: James --

11 MR. RYTTING: Let me lay out my position
12 here.

13 MS. SCARDINO: James, hold on. I'll --

14 MR. RYTTING: No. I'm going to say it on
15 the record right now.

16 MR. DOYLE: I object.

17 MR. RYTTING: I'm -- no. I'm sorry, I'm
18 going to put it on the record right now.

19 We have before us -- your name again is
20 Dale what?

21 MR. DOYLE: What?

22 MR. RYTTING: What's your last name?

23 MR. DOYLE: Doyle.

24 MR. RYTTING: -- Dale Doyle is
25 representing --

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1 MR. DOYLE: That -- that -- that --

2 Mr. Rytting, that is not my name.

3 MR. RYTTING: James Doyle. James Doyle.

4 I'm just going to put it on the record,
5 Gretchen, and then you can continue.

6 -- James Doyle, who has come here to
7 represent the witness, Kelly Siegler. He has informed
8 us before this deposition started that he was going to
9 enforce the rule that under the Federal Rules of Civil
10 Procedure that the deposition must be conducted as in a
11 trial.

12 Mr. Doyle does not represent -- represents
13 a nonparty witness. Mr. Doyle knows very well that in
14 any trial a representative of a nonparty witness does
15 not get to ask questions of the prosecutor, of the
16 defense attorney or of the Court except on a very
17 limited basis that has to do with his client's privilege
18 to testimony -- testify if they need to insert a Fifth
19 Amendment right.

20 But he has repeatedly asked questions in
21 this deposition that have nothing to do with privileges,
22 that have nothing to do with anything that an attorney
23 who represents a nonparty would be allowed to do in a
24 deposition.

25 He is obstructing this deposition, and he's

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1 doing it purposefully, and we will be seeking sanctions
2 if it continues. Period.

3 MS. SCARDINO: I'd like to --

4 MR. DOYLE: Gretchen, if I could --

5 MS. SCARDINO: Continue on with my
6 questioning.

7 MR. DOYLE: Gretchen, if I could, my
8 purpose in -- in asking those questions is to determine
9 whether or not this is within the parameters, as I
10 understand, that Judge Ellison set up. He did set some
11 parameters.

12 MR. RYTTING: Tell him it's not his
13 business.

14 MS. SCARDINO: We --
15 James.

16 This is a -- this is a -- no, he did not --
17 he did not set specific parameters on the deposition.
18 This is a discovery deposition that he's allowed us to
19 take. Now, if we need to call the Court and discuss it
20 with him so we can continue --

21 MR. DOYLE: Am I wrong?

22 MS. SCARDINO: -- let's go ahead and do
23 that but --

24 MS. MIRANDA: I mean, I'll respond.
25 Gretchen and I --

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1 MS. SCARDINO: Okay.

2 MS. MIRANDA: -- discussed prior to the
3 depositions about the scope and -- and we did agree that
4 we would keep it within the scope of the claims, and I
5 mean, there are Brady claims that have been raised in
6 the allegations.

7 And so, I mean, I can't -- I mean, you're
8 her client but as far as the director is concerned,
9 questions regarding the Brady -- her Brady practices are
10 within the scope.

11 MR. DOYLE: Okay. That's all I wanted to
12 know.

13 THE WITNESS: But the question was about
14 open policy offense report rules at the DA's office,
15 which is not within the scope.

16 MS. SCARDINO: Okay. What I think would be
17 best is to pause the deposition right now, let's call
18 Judge Ellison so everyone is on the same -- same page --

19 MR. DOYLE: I mean, I'm --

20 MS. SCARDINO: -- as exactly what this is
21 because this is -- there are no limits on this
22 deposition but if we're going to continue to have to
23 stop it every few minutes --

24 MR. DOYLE: I just asked a question and I
25 got an answer, and I said go.

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1 MS. SCARDINO: Okay.

2 MR. DOYLE: Do you understand all I'm
3 trying to do is find out -- there are some parameters,
4 you would have to agree with me. I just heard --

5 MS. SCARDINO: Parameters under the Federal
6 Rules but there's no specific -- Judge Ellison did not
7 put any specific parameters on this deposition such as
8 you can't go into other cases, you can't go into the
9 Herrero case.

10 THE WITNESS: That's not what I was told.

11 MS. MIRANDA: I --

12 MS. SCARDINO: Okay.

13 MS. MIRANDA: I think that -- our
14 understanding is that there are parameters and this
15 incident is limited to the case and to the allegations
16 that have been raised.

17 I have not had -- personally had concerns,
18 based on the questions that have been asked to date,
19 that we have gone beyond those. I feel like if we go
20 beyond those, then I probably will say something but to
21 this point, I have not had any concerns.

22 MR. DOYLE: That's fine.

23 MS. SCARDINO: Well, in the interest of
24 continuing and trying to get this over with, I want to
25 keep going but if there's any more -- if any other

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1 objection comes up, then at that point, we'll stop,
2 we'll call the Court and figure it out.

3 MR. DOYLE: I want to -- I want to make
4 sure that we stay within the parameters, as I understood
5 them to be, that's all, and that's why I asked the
6 question, Gretchen.

7 MS. SCARDINO: Okay.

8 Q. (BY MS. SCARDINO) Now, I'm going to ask this
9 question about the offense reports, going back to it,
10 you said, quote, "For the most part, the defense was
11 able to see the offense reports." What did you mean
12 "for the most part"?

13 A. It was an open file policy.

14 Q. Okay. But you said "for the most part," so,
15 that means not all offense reports were given to them,
16 correct?

17 A. Correct.

18 Q. Okay. If the witness -- if the investigator
19 did not testify in the trial, were you obligated to turn
20 those offense reports over to the defense?

21 A. I don't understand what that has to do with the
22 Jeffrey Prible case and the ring of snitches that you
23 all have alleged that I orchestrated.

24 MS. SCARDINO: Okay. Objection, non --

25 A. I'm not going to ask -- I'm not going to answer

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1 questions about every case --

2 MR. DOYLE: Go ahead and just answer that
3 question.

4 MS. SCARDINO: Objection, nonresponsive. I
5 do think at this point it would be best to call the
6 Court and just get everything --

7 MR. DOYLE: I just told her to go ahead and
8 answer it. Go ahead. Ask the question.

9 Q. (BY MS. SCARDINO) I asked the question. Are
10 you going to answer it or not?

11 A. What was the question?

12 Q. "For the most part" -- you said, "For the most
13 part, the defense was able to see the offense reports."
14 What did you mean "for the most part"? When were they
15 not able to see the offense reports?

16 A. Well, the most obvious exception to seeing the
17 offense report was if an examining trial was requested.

18 Q. Okay. And was an examining trial requested in
19 this case?

20 A. In the Jeffrey Prible case?

21 Q. Right. Yes.

22 A. I don't think so.

23 Q. Okay. Were the offense reports in this matter
24 of those investigators that did not testify at
25 Mr. Prible's trial, were those offense reports given to

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1 Mr. Prible's defense attorneys?

2 A. Yes.

3 Q. When?

4 A. Whenever they came to look at the file.

5 Q. And when an attorney did come and look at the
6 file, were you in the room with them when they looked at
7 the file?

8 A. Sometimes I was. Sometimes I wasn't.

9 Q. Okay. And you'll agree with me that when you
10 say "open file," ultimately, the prosecutor is the only
11 person that knows what is in the entire file, correct?

12 A. Correct.

13 Q. Okay. And if you had removed certain things
14 from the file, there would be no way for the defense to
15 know that unless you told them that, correct?

16 A. Correct.

17 Q. What was your policy regarding the production
18 of -- or the disclosure of written witness statements to
19 the defense?

20 A. In the Prible case?

21 Q. Yes, in the Prible case.

22 A. The defense got to see it.

23 Q. When did they see it?

24 A. Whenever they came to look at the file.

25 Q. So, this was a different situation than in the

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1 Temple case where you didn't present the -- or offer --
2 or disclose the written witness statements until after
3 the witness had testified; is that correct?

4 A. Yes.

5 Q. And it was different because the Temple case
6 was an examining trial?

7 A. Yes.

8 Q. And so, you -- you had different rules that you
9 went by if it was an examining trial versus just a
10 normal trial?

11 A. According to the office policy, yes.

12 Q. And that's contained somewhere within the
13 office policy manual?

14 A. Yes.

15 Q. What was the DA's policy regarding the
16 disclosure of Brady evidence that came to light after a
17 trial was over?

18 A. The same as it was before. If you heard about
19 Brady information, you disclosed it.

20 Q. Even after the trial was over, you needed to
21 make that disclosure to defense counsel?

22 A. Yes.

23 Q. And were you ever involved in the state habeas
24 proceeding for Mr. Temple -- I mean for Mr. Prible?

25 A. Can you be more specific?

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1 Q. Were you at the DA's office during the state
2 habeas proceeding for Mr. Temple?

3 A. What years?

4 MR. DOYLE: Prible.

5 Q. (BY MS. SCARDINO) I'm sorry. Mr. Prible.

6 A. What were the years of that proceeding?

7 Q. I believe 2004, 2005.

8 A. I was still at the office. Was I involved in
9 it, I was not in appellate.

10 Q. Okay. But you would have been consulted by the
11 appellate group prior to them appearing at the state
12 habeas hearing?

13 A. I never appeared at any state habeas hearing.

14 Q. I'm sorry. Let me -- that might have been
15 confusing.

16 The people in the appellate group at the
17 DA's office that were prepping for the state habeas
18 hearing, they would have consulted you, as the trial
19 attorney on that case, prior to that hearing, correct?

20 A. I would hope so.

21 Q. Right. I mean, that -- that would make sense
22 that they would come to you since you had --

23 A. They didn't always.

24 Q. -- been the person that tried the case?

25 A. They didn't always.

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1 Q. Did they in this case?

2 A. I don't remember.

3 Q. So, they might have, you just don't remember?

4 A. Correct.

5 Q. Exhibit 154 is excerpts from that policy
6 manual. And I'll represent to you that this policy
7 manual was produced by Brian Rose in response to a
8 Public Information Act request to me as the manual that
9 would have been in place in 2001 and 2002.

10 And if you go to Page 1 -- or Page 25, so,
11 it's Exhibit 154-25 --

12 A. Not all of 2001 because the date is August,
13 2001. So, there could have been something different at
14 some part -- point in 2001.

15 Q. So, do you disagree with Mr. Rose's
16 representation that this is the policy manual that was
17 in effect in 2001 and 2002?

18 A. Well, from the bottom of the page, it says this
19 is effective August 16 of 2001. So, more than half of
20 2001, some of these things could have been different.

21 Q. Okay. And you tried Mr. Prible's case in 2002?

22 A. Yes.

23 Q. Okay. So, if you go to Page -- Exhibit
24 154-25 -- and I know that your eyesight is -- is
25 recovering, so, I can read this to you. It says, quote,

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1 "A prosecuting attorney should not impede defense
2 counsel's access to witness but may accompany and assist
3 witnesses in any interview with defense counsel." Now,
4 if a prosecutor does not reveal the existence of a
5 witness, that would be an impediment, right?

6 A. Not necessarily.

7 Q. Well, how would the defense attorney know about
8 a witness if the prosecutor didn't disclose the identity
9 of that witness?

10 A. I don't know who the witness is.

11 Q. Okay. How about a jailhouse informant that
12 came to you to talk with you about a case, there's no
13 way a defense attorney could have known that unless you
14 had disclosed that, correct?

15 A. I think that answer is going to always depend
16 on the circumstances of a given case.

17 Q. Okay. I just gave you the circumstances.
18 What's your answer with those circumstances?

19 A. The same.

20 Q. So, you can't answer yes or no?

21 MR. DOYLE: I'm not sure I understood.

22 MR. RYTTING: That is not your -- please
23 tell him to -- we're just going to have to stop if he
24 does that again.

25 Q. (BY MS. SCARDINO) If a prosecutor --

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1 MR. RYTTING: I'm really not going to put
2 up with it.

3 Q. (BY MS. SCARDINO) If a prosecutor does not
4 reveal the existence of a witness, that would be an
5 impediment, that's my -- my premise that I'm asking you
6 the question, and the -- the circumstances are if a
7 jailhouse informant reached out to you, Kelly Siegler,
8 to talk with you about a case, the defense attorney
9 would have no way of knowing about that witness unless
10 you disclosed the identity of that witness to them;
11 isn't that correct?

12 A. What's your question?

13 Q. That was my question. Can you answer that
14 question?

15 A. I cannot.

16 Q. You can't answer that?

17 A. I don't think that's necessarily always going
18 to be an impediment.

19 Q. Okay.

20 MS. SCARDINO: Objection, nonresponsive.

21 Q. (BY MS. SCARDINO) If a -- if a jailhouse
22 informant -- in this case, Nathan Foreman is one -- came
23 to you and said he had information about Prible's case,
24 the defense attorney would have no way of knowing that
25 that witness came to you with that information unless

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1 you disclosed that to the defense attorney, wouldn't you
2 agree?

3 A. No, I don't agree with that statement.

4 Q. Okay. Moving on, also on Exhibit 154-25, it
5 says, "A prosecuting attorney shall provide information
6 known to the prosecuting attorney which is subject to a
7 voluntary discovery agreement or Court order throughout
8 the case." Now, this doesn't look like an open file
9 policy to me.

10 A. What doesn't?

11 Q. This -- this statement saying that the
12 prosecuting attorney shall provide information which is
13 subject to a voluntary discovery agreement or a Court
14 order. Is that different from an open file policy?
15 Right?

16 A. I didn't write the office manual. I have no
17 idea what they meant when they wrote it.

18 Q. Okay. But you'll agree that this statement
19 does not describe an open file policy, right?

20 A. I don't agree with that. I don't know what
21 they meant when they wrote this.

22 Q. Did you ever enter into a voluntary discovery
23 agreement with defense counsel?

24 A. Orally voluntarily all the time.

25 Q. Okay. But nothing in writing?

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1 A. I might have had a few.

2 Q. Okay. When a defense attorney would come and
3 look at the file, would you take notes of what was shown
4 to that defense attorney?

5 A. Sometimes.

6 Q. Did you in this case?

7 A. In the Prible case?

8 Q. Uh-huh.

9 A. No.

10 Q. Okay. Going back on Exhibit 154-25, it also
11 says, "A prosecuting attorney shall participate in good
12 faith in pretrial discovery. Absent voluntary
13 discovery, the prosecuting attorney shall diligently and
14 timely divulge matters as may be ordered by the Court,"
15 end quote. Now, again, there's no mention of an open
16 file policy in that paragraph, right?

17 A. Not in this paragraph, no.

18 Q. What is a timely divulging of information, in
19 your mind?

20 A. I don't know. I didn't write that paragraph.

21 Q. Okay. You -- let's -- let's talk about your
22 understanding of the requirement that you timely
23 disclose Brady -- Brady information. What is your
24 understanding of the timely disclosure requirement?

25 A. To make good faith reasonable efforts to

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1 disclose.

2 Q. And at what point are you required to disclose
3 Brady information?

4 A. That depends on the circumstances.

5 Q. Okay. If you look at Exhibit 140, Page 147,
6 this is your testimony in the Temple habeas proceeding,
7 Page 147, line 3, and the question is, "Okay. What is
8 your understanding -- or I should say" --

9 MR. DOYLE: Excuse me. She doesn't have --

10 MS. SCARDINO: Sorry. I was reading it to
11 her because of her eyesight.

12 Q. (BY MS. SCARDINO) Here, I can give you a copy.
13 Page 147.

14 MR. DOYLE: Again that reference?

15 MS. SCARDINO: Okay. 147, line 3.

16 MR. DOYLE: Do you have the page that
17 precedes it?

18 MS. SCARDINO: Well, it's -- these are
19 excerpts. Oh, yeah. Do I have the page that precedes
20 it?

21 MR. DOYLE: Right.

22 MS. SCARDINO: Yes. We can go off the
23 record and I can get it for you if you'd like to read it
24 right now.

25 MR. DOYLE: Yeah, let her read this first.

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1 MS. SCARDINO: Okay.

2 A. Okay.

3 Q. (BY MS. SCARDINO) Okay. So, Page 147, line 3
4 of the Temple case, the question is, "What is your
5 understanding -- or I should say what was your
6 understanding when you were at the district attorney's
7 office about a prosecution's obligation to turn Brady
8 evidence over to the defense? And when I say 'your
9 obligation,' the timeliness of it. When -- at what
10 point is a prosecutor obligated to turn Brady evidence
11 over to the defense?"

12 And you answered, "As soon as you can."

13 And the question, "And when you say 'as
14 soon as you can,' can you elaborate on that? I mean, do
15 you have -- as soon as you can, as soon as you discover
16 it? What?"

17 And you responded, "As soon as you discover
18 it. As soon as possible."

19 And that was a truthful testimony on your
20 part?

21 A. Yes.

22 Q. Going back to Exhibit 154, Page 25, it says, "A
23 prosecuting attorney shall timely disclose to the
24 defense the existence of evidence which tends to negate
25 the guilt of the accused as to the offense charged."

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1 Now, does this comport with your
2 understanding of the Brady rule back in 2001 and 2002?

3 A. Yes.

4 Q. Okay. You only had to disclose evidence which
5 tended to negate the guilt of the accused?

6 A. You put the word "only" in there.

7 Q. I'm asking you if that's your understanding?

8 A. No.

9 Q. What other evidence did you need to disclose?

10 A. Ask me the question again.

11 Q. What other evidence did you need to disclose
12 under the Brady rule?

13 A. Under Brady?

14 Q. Uh-huh.

15 A. Evidence that is exculpatory, evidence that
16 might mitigate punishment, evidence that would affect
17 the credibility of a witness for impeachment purposes.

18 Q. And let's talk about the Prible -- or the
19 Tirado/Herrera murders. The murder of that family
20 occurred on April 23rd, 1999, correct?

21 A. I don't remember.

22 Q. Okay. I'll represent to you that was the date
23 of the murder. And Detectives Curtis Brown and Ramon
24 Hernandez interviewed Prible that very day. Do you
25 remember that?

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1 A. I do not.

2 Q. Okay. Do you remember Ramon Hernandez is the
3 same detective that worked on the David Temple case?

4 A. I don't remember.

5 Q. You don't remember his name?

6 A. I don't think I ever met him.

7 Q. Okay. And at all times Mr. Prible was
8 cooperative, according to Detective Brown. Do you
9 recall that?

10 A. I don't remember the specific facts, no.

11 Q. Okay. And Mr. Prible gave two statements --
12 voluntary statements within hours of the murder. Do you
13 recall those?

14 A. I do not.

15 Q. Okay. And he admitted in those statements that
16 he had had consensual oral sex with Ms. Tirado, the
17 victim. Do you recall that?

18 A. I don't. The trial was 17 years ago. I do
19 not.

20 Q. Okay.

21 A. The trial was 17 years ago.

22 Q. Yes. Yes. I understand. Okay. And the
23 detectives photographed every inch of Mr. Prible's body
24 that day. Do you remember that?

25 A. I do not.

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1 Q. Okay. They found no blood. Do you remember
2 that?

3 A. I don't remember the facts.

4 Q. Okay.

5 A. The details of the facts.

6 Q. Okay. No -- no burns from -- caused by the
7 accelerant that was used to start the fire. You don't
8 remember that? And I understand, you can say you don't
9 remember. I just need to go through it all.

10 A. The trial was in 2002.

11 Q. Uh-huh.

12 A. This is 2017. I have looked at, investigated,
13 worked on, worked questions up for, tried, given advice
14 on, talked about and gone over maybe 500 murder cases
15 since this one.

16 Q. Okay.

17 A. That's a lot.

18 Q. And so, you didn't review any of your materials
19 from this case in order to prepare yourself for this
20 deposition today?

21 A. No. I don't have them.

22 Q. Okay. Well, was there anything preventing you
23 from getting the work product file and the other -- the
24 rest of the file from the DA's office prior to your
25 deposition?

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1 A. I don't have them. I don't work there any
2 more.

3 Q. I'm asking -- I understand that. I'm asking
4 you was there anything preventing you from asking the
5 district attorney's office to allow you to see the file
6 prior to your deposition today?

7 A. No one told me to do that.

8 Q. And --

9 MS. SCARDINO: Objection, nonresponsive.

10 Q. (BY MS. SCARDINO) My question was was there
11 anything preventing you from making a phone call to the
12 DA's office to ask if you could see this file prior to
13 your deposition today?

14 A. No.

15 Q. Mr. Prible, I'll represent to you, he gave his
16 clothes to the detectives that day so they could test
17 for trace evidence, and there was no blood, no Kutzit --
18 that's the accelerant used to start the fire -- no hair,
19 no burns, no soot, no fibers of any kind connecting him
20 to the murder scene. You don't recall that?

21 A. Anything that you would represent to me, I
22 can't agree to. I've read your petition. It's full of
23 lies. So, whatever you might tell me you represent to
24 me, I really need to see for myself. And I don't
25 remember all the details of the case.

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1 Q. Okay. As early -- as early as April 26th,
2 1999, the DA's office was involved in this case. I'll
3 show you Exhibit 28. Exhibit 28 -- Exhibit 28 is an
4 offense report -- or a supplemental report, and it
5 states that Detectives Brown and Schmidt went to the
6 Special Crimes division of the DA's office and got a
7 search warrant for Prible's house, and it also states
8 that the affiant spoke with Investigator Johnny Bonds of
9 the Harris County district attorney's office. And this
10 is dated April 26th, 1999. And my question to you is
11 were you involved in this case at this time?

12 A. As I stated earlier, I didn't even go to
13 Special Crimes until the end of 1999.

14 Q. Okay. So, does that mean you were not involved
15 in this case at this time?

16 A. I was not.

17 Q. Okay. When did you get involved in this case?

18 A. 2001, maybe 2000. I don't remember.

19 Q. Okay. Do you remember the circumstances of
20 you're getting -- or hearing about the case for the
21 first time?

22 A. Yes.

23 Q. And what were those circumstances?

24 A. I was in major offenders, and Curtis Brown came
25 by to talk about the case to present it to me to give it

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1 to me to read.

2 Q. And what was your thought on the case after you
3 read it?

4 A. That we needed to proceed with working the
5 case.

6 Q. Okay. And this -- you think this might have
7 been in 2000 or 2001?

8 A. It wasn't '99 because I didn't go to Special
9 Crimes until the end of '99.

10 MR. DOYLE: I'm going to ask her not to
11 speculate but if she's got a date for you --

12 A. 2000, 2001. I don't know any better than that.

13 Q. (BY MS. SCARDINO) You'll agree that right
14 away, Mr. Prible was listed as a suspect, right?

15 A. Are you looking at something in particular on
16 Exhibit 28?

17 Q. Well, I can show you -- no. I can show you
18 Exhibit 9. Exhibit 9 is a news release from the Harris
19 County sheriff's department, and it lists Mr. Prible as
20 the suspect?

21 A. It lists Mr. Prible as the suspect on the top
22 paragraph of this document. That doesn't necessarily
23 mean that it had to do with the news release itself.

24 Q. Okay. Do you disagree that Mr. Prible was the
25 only -- or the -- the suspect in this case from the very

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1 beginning?

2 A. I do not.

3 Q. You do not disagree to that? Sorry, I -- I
4 said a double negative. Do you agree -- let me restate
5 it so it's clear.

6 Do you agree that Mr. Prible was the only
7 suspect in this case since the murders were committed in
8 1999?

9 A. The only suspect I disagree with. The primary
10 suspect I agree with.

11 Q. Okay. So, there were other suspects in this
12 case?

13 A. I don't remember. There could have been. I
14 don't remember. I wasn't involved initially.

15 Q. Okay.

16 A. I don't want to speak for what happened before
17 I came on the case.

18 Q. So, the Harris County sheriff's office had
19 interviewed all witnesses and submitted all of their
20 reports in 1999 and the investigation was completed by
21 1999. Do you remember that?

22 A. I wasn't involved in 1999, and I disagree with
23 that.

24 Q. You disagree with that?

25 A. Yes.

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1 Q. Okay. What was done post 1999?

2 A. That's when I got the case.

3 Q. Yes. And what did you do when you started
4 investigating the case?

5 A. Started from the beginning all over again.

6 Q. Did you interview witnesses?

7 A. Yes.

8 Q. Okay. But you didn't make any notes of those
9 witnesses?

10 A. If I did, they're in the file.

11 Q. They would be in your work product file?

12 A. No. They would be in the file.

13 Q. How was the Herrera/Tirado case brought to the
14 DA's attention?

15 A. Initially?

16 Q. Uh-huh.

17 A. I wasn't involved initially.

18 Q. Okay. Well, let's look at Exhibit 154, Page
19 18. This is the handbook again. And it says that a
20 potential charge may be brought to the DA's attention
21 one of three ways. First, through the intake division
22 following a law enforcement investigation, second,
23 through a citizen's complaint to the DA's office or,
24 three, through charges filed by a special division of
25 the DA's office, for example, Special Crimes, or an

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1 information or felony complaint is filed directly or a
2 matter is presented to the Grand Jury for indictment.
3 Do you recall that? Those are the three ways that the
4 charge could be brought to a DA's attention?

5 A. Yes.

6 Q. Okay. So, this is -- tell me if I'm correct,
7 this is the order of events, the DA decides to accept
8 charges and then you present the case to the Grand Jury
9 for indictment, is that the correct order of events?

10 A. Say it again.

11 Q. The district attorney decides to accept charges
12 and then the district attorney presents the case to the
13 Grand Jury for indictment?

14 A. That's one way that it could happen, yes.

15 Q. Okay. What's another way that it could happen?

16 A. You take a case direct to the Grand Jury.

17 Q. Okay. Before you accept charges?

18 A. Correct.

19 Q. Okay. Okay. And the DA's office had
20 guidelines about the acceptance of charges, and those
21 are outlined also on 154-18. It says, "General
22 guidelines for the acceptance of a criminal charge
23 should include the following considerations."

24 A. Where you reading? This what paragraph?

25 Q. 154-18.

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1 A. Halfway down?

2 Q. Yes.

3 A. Okay.

4 Q. "General guidelines for the acceptance of a
5 criminal charge should include the following
6 considerations: One, the mandatory considerations are:
7 One, has the law been violated and, two, is there
8 probable cause to believe the accused is guilty of that
9 violation. If both do not exist, no charge should be
10 accepted." Do you see that?

11 A. Yes.

12 Q. Okay. And you'll agree with that statement, I
13 presume?

14 A. Yes.

15 Q. Okay. And if you go to 154-26, it says --
16 sorry. Tell me when you're ready.

17 A. Okay.

18 Q. Prosecutors have broad discretionary authority
19 in pursuing criminal charges but this discretion is
20 tempered. A prosecuting attorney shall initiate only
21 those charges for which the prosecuting attorney
22 reasonably -- reasonably believes probable cause exists.
23 Do you see that?

24 A. No. I'm on Page 26. What did you say again?

25 Q. Let me see. Sorry. It says in paragraph 3.2,

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1 "A prosecuting attorney: B, shall initiate only those
2 charges for which the prosecuting attorney reasonably
3 believes probable cause exists."

4 A. Okay.

5 Q. Do you see that?

6 A. Yes.

7 Q. And you'll agree with that statement?

8 A. Yes.

9 Q. Okay. What is your understanding of probable
10 cause?

11 A. A good faith belief -- a good faith belief
12 based on articulable facts that a crime has been
13 committed.

14 Q. Okay. And you'll agree that the standard for
15 probable cause is a much lower standard than beyond a
16 reasonable doubt?

17 A. Yes.

18 Q. Okay. Now, charges were not accepted against
19 Prible in 1999. You remember that, right?

20 A. I do not.

21 Q. Well --

22 A. That is not a correct statement.

23 Q. Were they -- were they accepted against Prible
24 in 1999? I'm asking you. I -- I didn't see anything in
25 the file.

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1 A. I -- I was not involved. As far as I know, no
2 one ever requested for charges to be accepted.

3 Q. Okay.

4 A. The investigation was just ongoing.

5 Q. Okay. So, someone in the DA's office was
6 working on the case from the very beginning in April,
7 1999 but, for whatever reason, they did not ask to
8 accept the charges at that time?

9 A. I don't know. I don't know who was working on
10 it before me.

11 Q. You don't? Okay.

12 A. Johnny Bonds would have known maybe, if he
13 remembered.

14 Q. Okay. And presumably, it's because the
15 evidence didn't -- at that time didn't rise to the level
16 of probable cause, otherwise, they would have accepted
17 charges on a five-person murder, right?

18 MS. MIRANDA: Objection, form.

19 A. I disagree with that.

20 Q. (BY MS. SCARDINO) You do disagree with that?

21 A. I do.

22 Q. Okay. Was this case presented to the Grand
23 Jury for indictment in 1999?

24 A. I didn't have the case in 1999.

25 Q. And -- and I understand that, although you did

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1 have the file. And so, I'm asking you if you recall
2 from your review of the file whether the case was
3 presented to the Grand Jury for indictment in '99?

4 A. Not that I recall, no.

5 Q. Okay. Exhibit 154-11, it addresses cases that
6 are declined for prosecution.

7 A. Okay.

8 Q. Okay.

9 MS. MIRANDA: I'm sorry, tell me again what
10 page you're on.

11 MS. SCARDINO: Sorry. 154-11.

12 Q. (BY MS. SCARDINO) And it says, "Whenever a
13 case is submitted through DIMS to the district attorney
14 police intake section and is declined for prosecution, a
15 record of that transaction must be made. After
16 receiving an offense report, the prosecutor will
17 complete the appropriate case decline form describing
18 precisely why the charge was declined -- declined." Do
19 you see that?

20 A. I do.

21 Q. Okay. So, what does decline the case for
22 prosecution mean?

23 A. You need to go back to the second line where it
24 says "through the intake section." To -- to now, you
25 and I have been talking about through the Special Crimes

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1 section. So, this is actually irrelevant to anything
2 we've been talking about.

3 Q. Okay. Well, explain that to me. How -- what
4 does this paragraph mean?

5 A. This paragraph has to do with when you're
6 working intake, the more routine charges, if an officer
7 comes in to present a case to you and you're the
8 prosecutor behind the desk and you say, "I'm not going
9 to take those charges," the cop can, if he wishes at
10 that point, ask you for a declination, which is what
11 this talks about.

12 Q. Okay. And the DA didn't decline this case, the
13 Prible case, for prosecution back in 1999, right?

14 A. Well, as far as I know, no one ever went
15 through intake, which is what Page 11 talks about.

16 Q. Right. So, it didn't even get that far to go
17 through intake?

18 A. It's not that far, it's two different avenues.

19 Q. Okay.

20 A. Most murder cases -- capital murder cases, a
21 lot of them didn't go through intake, they went through
22 Special Crimes.

23 Q. Okay. And that was your division, Special
24 Crimes?

25 A. Yes.

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1 Q. Okay. So, the case went cold in -- in 1999 and
2 there's nothing new in the file, I'll represent to you,
3 until 2001, although you've seen the file. Do you --
4 would you agree with that statement?

5 MR. DOYLE: I don't -- I don't think she
6 has seen --

7 A. That the case went cold, no.

8 MR. DOYLE: I'll object, the
9 characterization that she had seen the file.

10 Q. (BY MS. SCARDINO) Okay. Let -- let me restate
11 since it's been 17 years.

12 All of the investigate -- all of the
13 investigative reports and the evidence in the file is
14 dated through 1999 but then nothing else is new in the
15 file until 2001. Do you recall that?

16 A. I don't recall that.

17 Q. Okay. I'm going to show you Exhibit 46.
18 Exhibit 46 is a March 1st, 2001 fax from William Watson
19 to Bonds -- to Johnny Bonds. Do you see that?

20 A. I do.

21 Q. Okay. And Dr. Watson was the state's DNA
22 expert in this case. Do you recall?

23 A. He's the witness who testified, yes.

24 Q. Okay. So, it appears from the date of this fax
25 that this case, the Prible case, is back on your and

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1 Mr. Bonds' radar at least by March 1st, 2001, correct?

2 A. Yes.

3 MS. MIRANDA: Objection, form.

4 Q. (BY MS. SCARDINO) Okay. Now, why did you
5 choose to pick the case back up at this time?

6 A. As I stated earlier, because Curtis Brown
7 brought the case to me in major offenders to look over
8 and read to see what I thought about it.

9 Q. Okay. So, it's on your radar in the spring of
10 2001, and on April 4th, 2001 --

11 MR. DOYLE: I'm a little confused,
12 Gretchen --

13 MS. SCARDINO: Yes.

14 MR. DOYLE: -- as to whether she was in
15 Special Crimes, as testified earlier, at this point.

16 MR. RYTTING: Object. This is -- that is
17 not a proper objection. If you have an objection to the
18 question, please state it. Do not --

19 MS. SCARDINO: My --

20 MR. RYTTING: -- engage in a dialogue,
21 Mr. Doyle.

22 MS. SCARDINO: My understanding -- yes, I
23 would agree with that. Please state the objection, and
24 I'll re -- I'll rephrase if I need to.

25 MR. DOYLE: Well, I think it

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1 mischaracterizes her earlier testimony.

2 MS. SCARDINO: Okay. Okay. And I --

3 MR. DOYLE: And I just wanted to bring it
4 to your attention so you can get it right.

5 MS. SCARDINO: Okay. And I'd also --

6 MR. DOYLE: If I'm wrong --

7 MS. SCARDINO: And I'd also --

8 MR. DOYLE: If I'm wrong, you'll get it --
9 she'll tell you.

10 MS. SCARDINO: Okay. And I'd also ask,
11 James, if you could please stick with form objections so
12 that the witness doesn't --

13 MR. DOYLE: I'm going to do what I need to
14 do but go ahead. I haven't interrupted you.

15 Q. (BY MS. SCARDINO) Okay. So, Exhibit 52 --

16 MS. SCARDINO: I'm sorry, you'll have to
17 share the exhibit.

18 Do you have a copy of Exhibit 52?

19 MS. MIRANDA: Yes, I do.

20 MS. SCARDINO: Okay.

21 MR. DOYLE: You don't have another one for
22 me?

23 MS. SCARDINO: Huh?

24 MR. DOYLE: Do you have one for me?

25 MS. SCARDINO: Can you take a look at that

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1 one? Sorry about that. I didn't have as many of that
2 one.

3 Q. (BY MS. SCARDINO) Exhibit 52 is an April 4th,
4 2001 letter from an inmate at FCI Beaumont named Jesse
5 Moreno to you. Now, if you need some time to read this,
6 we can go off the record.

7 MR. DOYLE: No, if she -- if she needs --

8 Q. (BY MS. SCARDINO) Or if you're ready to --

9 MR. DOYLE: I think if you're going to ask
10 her about it, let her read it.

11 MS. SCARDINO: No, I absolutely will let
12 her read it but I know -- because of her eye problem, I
13 don't want to take up more time than usual on our --

14 MR. DOYLE: Well, she -- she's entitled to
15 look at whatever you're going to ask her about, I think.

16 MS. SCARDINO: Absolutely, I agree. So,
17 let's --

18 MR. DOYLE: But not -- and it's on the
19 time -- it's your time, not hers.

20 Q. (BY MS. SCARDINO) Would you like to go off the
21 record to review this?

22 A. No. I can look at it real quick.

23 Q. Okay.

24 MR. RYTTING: And I'm going to state one
25 more time, James Doyle apparently does not know the

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1 rules. You are not to make objections, especially not
2 speaking objections or instructing the witness like
3 this. That is not allowed in a trial. You know you'd
4 never be able to do this in a trial and you continue to
5 do it. You know that nonparty witnesses do not get to
6 make these types of interjections.

7 MR. DOYLE: I object --

8 MR. RYTTING: So, it's purposefully.

9 MR. DOYLE: -- as to the double teaming,
10 that it's inappropriate.

11 Gretchen, after this, do you want to take a
12 quick break? We've been going about an hour and 15.

13 MS. SCARDINO: Uh-huh.

14 A. Okay.

15 MS. SCARDINO: After I finish this line of
16 questioning, then I'll stop and break.

17 MR. DOYLE: That's fine.

18 Q. (BY MS. SCARDINO) Okay. So, on April 4th,
19 2001, you received this letter, Exhibit 52, from Jesse
20 Moreno, and Mr. Moreno was --

21 A. Well, that's the date he wrote the letter.

22 Q. Okay. The date he wrote the letter. So,
23 sometime after April 4th, 2001, probably within a couple
24 of days, you received this letter from Mr. Moreno,
25 correct?

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1 A. Within a week, I would say, yes.

2 Q. Okay. And Mr. Moreno was a federal prison
3 inmate that had testified for you in the murder trial of
4 Jason Morales a few years prior. Do you remember that?

5 A. Yes.

6 Q. Okay. In exchange, you dismissed a charge of
7 aggravated robbery against him in a home invasion case
8 in which the victims were beaten with a hammer. Do you
9 recall that?

10 A. I don't remember what happened with Jesse
11 Moreno's case having to do with Jason Morales. I don't
12 remember.

13 Q. With Jason Morales? You don't recall
14 dismissing a charge of aggravated -- of aggravated
15 robbery against him?

16 A. I do not.

17 Q. Okay.

18 A. I don't know what happened to his case. I
19 can't remember.

20 Q. Okay. So, you might have done it but you just
21 can't recall?

22 A. I do not remember.

23 Q. Okay. Do you recall that you also did not
24 charge him in a capital murder case in which he was a
25 suspect?

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1 A. I don't remember that at all.

2 Q. You don't recall that at all?

3 A. No.

4 Q. Okay. I'm going to show you Exhibit 70. This
5 is an excerpt of Dan Cogdell, Hermilio Herrero's
6 attorney, questioning Mr. Moreno.

7 MS. MIRANDA: Do you have an extra copy?

8 MS. SCARDINO: I'm sorry.

9 Q. (BY MS. SCARDINO) And if you look at Page 57,
10 line 23, the question is, "Let's talk about that crime
11 you claim you didn't commit. That crime occurred back
12 in October of 1996, right?"

13 Mr. Moreno answers, "I guess."

14 Question, "That crime involved a home
15 invasion committed here in Houston?"

16 Answer, "I don't know. I had nothing to do
17 with that. I know nothing about that case."

18 Question, "That crime involved a case where
19 victims were beaten with a hammer."

20 And then there's some objections by you,
21 and the Court rules, sustains the objection.

22 And Mr. Cogdell asks, question, "Isn't it a
23 fact, Mr. Moreno, that in addition to the crime that you
24 were charged with, which was later dismissed after you
25 testified, you were a suspect in a capital murder case"?

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1 Answer, "Yes."

2 Question, "So, in addition to the dismissal
3 of the aggravated robbery that was filed, you were never
4 charged with a capital murder case?"

5 Answer, "No."

6 Now, does this refresh your memory as to
7 whether you dismissed a charge of aggravated robbery
8 against Mr. Moreno and also did not charge him in a
9 capital murder case in which he was a suspect --

10 MS. MIRANDA: Objection, form.

11 Q. (BY MS. SCARDINO) -- in exchange for his
12 testimony in the Jason Morales trial?

13 A. Contrary to what your petition states, I did
14 not handle that capital murder case. It was never mine.
15 It was Mark Vincent's. I had nothing to do with that.

16 MS. SCARDINO: Okay. Objection,
17 nonresponsive.

18 Q. (BY MS. SCARDINO) So, the answer is no, you
19 did not dismiss a charge of aggravated robbery against
20 Mr. Moreno?

21 A. That's not my answer.

22 Q. Okay. Then I don't understand your answer.

23 A. I don't remember what happened in the cases
24 arising out of Jason Morales. I had nothing to do with
25 the capital murder case. That was not my case, contrary

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1 to what you've stated in your petition.

2 Q. Okay. Well, I'm -- I'm' not talking about the
3 petition right now. I'm just asking you a question.
4 So, you're saying that you had nothing to do with that
5 capital murder case?

6 A. Correct.

7 Q. Okay. But you might have dismissed the charge
8 of aggravated robbery but you don't recall?

9 A. I don't remember if he pled or it was
10 dismissed. I cannot remember.

11 Q. Okay. So, if you look at Exhibit 52, which is
12 Mr. Moreno's handwritten letter to you, he says he
13 helped you back in '97 and you told him if he ever
14 needed help to call you, right?

15 A. I don't think that's exactly the words I used.
16 That's what he said.

17 Q. And that's what I'm asking you, is -- is that
18 an accurate reflection of this letter, what I just
19 stated?

20 A. That's the -- those are Jesse Moreno's words --

21 Q. Yes.

22 A. -- not mine.

23 Q. I understand that. And he says he has
24 information on an unsolved murder and could help you if
25 you helped him, and he asked you to call up there and

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1 ask to speak with him because he's in the hole and can't
2 make a phone call. That's what he's asking you in this
3 letter, right?

4 A. That's what the letter says, yes.

5 Q. Okay. And so, when Moreno contacted you in
6 this letter April 4th, 2001, he was being housed in the
7 medium SHU in Beaumont, FCI Beaumont; isn't that right?

8 A. Medium or low, I don't remember.

9 Q. Okay. Somewhere in FCI Beaumont in the SHU?

10 A. What is the SHU?

11 Q. The SHU -- the special housing unit.

12 A. I didn't know that.

13 Q. Okay. That's just the segregation --

14 A. I didn't know that.

15 Q. The segregation unit. Okay. I'll refer to it
16 as the SHU, S H U.

17 Okay. And when he contacted you, he was in
18 the SHU with an old friend of his from the neighborhood
19 named Jesse Foreman, wasn't he?

20 A. I don't know that.

21 MR. RYTTING: Nathan Foreman.

22 Q. (BY MS. SCARDINO) I'm sorry. Nathan Foreman.

23 A. I don't know who he was with.

24 Q. You don't recall that he told you he was in
25 there with Nathan Foreman?

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1 A. From this letter, no.

2 Q. No. I'm asking you aside from this letter,
3 when he contacted you, at that time, he was in the SHU
4 with Nathan Foreman, right?

5 A. I don't know who he was with.

6 Q. Okay. I'm going to show you Exhibit 49.

7 MR. DOYLE: Are we going to another?

8 MS. SCARDINO: I'm sorry. The same line of
9 questioning and then I promise we'll go to the break. I
10 forgot.

11 Q. (BY MS. SCARDINO) Now, Exhibit 49 is the
12 inmate housing history for Jesse Moreno in FCI Beaumont.
13 And if you look down at the bottom -- let's see, it's
14 six lines from the bottom, it tells you where he was
15 housed --

16 A. On the first page?

17 Q. On the first page. Sorry. It tells you where
18 he was housed from 12-22-2000 through 5-3-01. Do you
19 see that?

20 A. Where it says BMM and then --

21 Q. A-DES.

22 A. Yes.

23 Q. Yes. Do you see that?

24 A. Yes.

25 Q. Okay. Now, if you look at Exhibit 50, which

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1 I'll show you, these are the housing -- BOP housing
2 records -- and by that I mean Bureau of Prisons --
3 BOP --

4 MS. MIRANDA: I'm sorry, Gretchen, do you
5 have one?

6 MS. SCARDINO: Yeah.

7 MS. MIRANDA: Thank you.

8 Q. (BY MS. SCARDINO) These are the BOP housing
9 records for Nathan Foreman. And if you look on the
10 second page, nine lines from the bottom, it says that
11 between February 28th, 2000 and April 18th, 2001 that
12 Foreman was housed in BMM A-DES, just like we saw with
13 Mr. Moreno, correct?

14 A. They're not in the same place.

15 Q. Why are they not in the same -- why do you make
16 that statement?

17 A. Because Jesse Moreno says in his letter he's in
18 isolation. So, wherever they're housed, it doesn't
19 matter, Jesse is in isolation.

20 Q. In the SHU, right?

21 A. I don't know what the SHU is. That's your
22 word. I've never heard that before.

23 Q. Okay. Would you agree that the documents say
24 what they say?

25 A. I would agree that Jesse says he's in

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1 isolation, which means he's not living with anybody.

2 Q. Okay.

3 A. That's what the letter says. These documents
4 are from the prison, which you must understand better
5 than I can but that's not what Jesse says.

6 Q. Okay.

7 A. He's not with Nathan Foreman, according to his
8 letter.

9 Q. Okay.

10 MS. SCARDINO: I'm going to take a break
11 right here and we'll come back in -- how long do you
12 need?

13 MR. DOYLE: Five minutes.

14 MS. SCARDINO: Five minutes.

15 THE VIDEOGRAPHER: The time is 10:24. We
16 are off the record.

17 (Short recess.)

18 THE VIDEOGRAPHER: This is the beginning of
19 file 2. The time is 10:37. We are on the record.

20 Q. (BY MS. SCARDINO) Ms. Siegler, did you respond
21 to Jesse Moreno's 4-4-01 letter?

22 A. In writing?

23 Q. In any -- in any way.

24 A. Eventually, I talked to him.

25 Q. Okay. Well, you didn't respond in writing

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1 then?

2 A. I don't think so, no.

3 Q. Okay. Eventually, you spoke with him
4 approximately how long after you got that letter?

5 A. I don't remember.

6 Q. And did you contact him?

7 A. At some point, we talked, yes.

8 Q. So, you contacted him? Because he says in his
9 letter you would have to contact -- call him, he's in
10 the SHU, right?

11 A. I don't remember how we got in touch the next
12 time but we did get in touch eventually.

13 Q. Okay. I'm going to show you Exhibit 53, and
14 this is a handwritten letter from Jesse Moreno's mom,
15 and this letter is dated April 10th, 2001. Do you see
16 that?

17 A. Yes.

18 Q. And in this letter, she asks you to help her
19 son, right?

20 A. Okay. What's your question?

21 Q. She asked you to help her -- help her son,
22 Jesse, right?

23 A. Yes.

24 Q. And did you respond to this letter?

25 A. I don't think so, no.

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1 Q. Okay. You don't recall ever speaking with
2 Ms. Moreno on the telephone?

3 A. No.

4 Q. Okay. Did you ever have any other written
5 correspondence with her?

6 A. I don't think so, no.

7 Q. Okay. Exhibit 161 is an April 15th, 2001
8 article in the HOUSTON CHRONICLE about the
9 Tirado/Herrera murders. Detective Curtis Brown is
10 quoted in that article. And he says what they need is
11 someone with knowledge of these killings to step
12 forward, someone who may have been told about them by
13 someone involved. Now, at the time of this article, you
14 were already working on the murder case again with
15 Detective Brown, right?

16 A. Are we not talking about these letters any
17 more?

18 Q. No. I've moved on.

19 A. So, we're off the letters?

20 Q. We're off the letters. I'm asking you about
21 the article.

22 A. Okay.

23 Q. So, April 15th, 2001, that article appears.
24 And by this time, you're already speaking with Detective
25 Brown about this case, right?

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1 A. It could have been after this article appeared
2 that I first started talking to Curtis about the case.
3 I don't remember this article coming up while I worked
4 on the case.

5 Q. And you recall earlier I showed you that March
6 1st, 2001 fax about this case, and so, we discussed that
7 you were already working on the case at that time with
8 Mr. Bonds?

9 MS. MIRANDA: Objection, form.

10 Q. (BY MS. SCARDINO) Was that not your testimony?

11 A. I don't think you ever asked me that specific
12 question.

13 Q. Okay. I'll ask you now. Were you working on
14 this case -- was the case on your radar again on
15 April -- on March -- in March of '01 --

16 MS. MIRANDA: Objection, form.

17 Q. (BY MS. SCARDINO) -- when -- when --

18 MS. SCARDINO: Let me just finish it real
19 quick.

20 MS. MIRANDA: Yeah. Sorry.

21 Q. (BY MS. SCARDINO) -- when that fax was sent to
22 Mr. Bonds from Mr. -- from Dr. Watson?

23 A. I don't know for sure. I don't remember when I
24 got on the case.

25 Q. Would Johnny Bonds have gotten in on it before

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1 you got on it?

2 A. Yes.

3 Q. Okay. So, he -- he might have been --

4 A. He was in Special Crimes before me.

5 Q. No, but I mean, if you all were working on a
6 case together, would the two of you approach it together
7 or would he be working on a case separately from you
8 working on it?

9 A. He could have been working separately.

10 Q. Okay. So, you don't -- you can't say whether
11 or not this case, this Tirado/Herrera case was on your
12 radar in March, 2001 at the date of that fax?

13 A. The date of this fax, the William Watson fax?

14 Q. Uh-huh.

15 A. I don't remember for sure when I started
16 working on the Prible case.

17 Q. Okay. And so, you don't know for sure if you
18 were already working with Detective Brown on this case
19 at the time of this April 15th, 2001 HOUSTON CHRONICLE
20 article?

21 A. I do not remember.

22 Q. Okay. You might have been, you just can't
23 recall --

24 A. Yes.

25 Q. -- the date?

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1 Okay. Now, on April 26, 2001, Moreno --
2 Jesse Moreno put your name on his phone list. I'll show
3 you an exhibit --

4 A. What date did you say again?

5 Q. April 26, 2001. And I'll show you Exhibit 172,
6 which is Mr. Moreno's phone list produced by --

7 MS. MIRANDA: May I have a copy?

8 Q. (BY MS. SCARDINO) -- the Board of Prisons.

9 MS. SCARDINO: I'm sorry.

10 Q. (BY MS. SCARDINO) Do you see on Page 1 right
11 there it's dated April 26, 2001 and he writes your name
12 down?

13 A. I see that.

14 Q. Okay. So, presumably, you talked to him before
15 that date, you spoke with him about his April 4th
16 letter, right, otherwise, he wouldn't have put your name
17 on the phone list?

18 MS. MIRANDA: Objection, form.

19 A. Not necessarily.

20 Q. (BY MS. SCARDINO) Okay. Do you recall if you
21 spoke with him between April 4th and April 26th, 2001?

22 A. I do not.

23 Q. Okay. You might have but you can't recall?

24 A. It's the wrong phone number to call me at if he
25 put my number down.

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1 Q. Okay. What is that phone number that he's
2 listed?

3 A. That's the general number.

4 Q. Okay.

5 A. So, if he -- if he had my correct number, it
6 wouldn't have been this one.

7 Q. Okay. What was your correct number?

8 A. 5845, 8339, 5865, not 5800.

9 Q. Okay. So, you don't recall if you spoke with
10 Mr. Moreno before he put your phone number down on his
11 phone list?

12 A. I do not.

13 Q. Okay. He also put his U.S. attorney that
14 prosecuted him in a Louisiana criminal case, U.S.
15 Attorney Todd Clemons. Do you see that?

16 A. I see that.

17 Q. Okay. Are you familiar with Mr. Clemons?

18 A. I remember his name.

19 Q. Okay. What do you remember -- do you -- did
20 you ever meet with him?

21 A. I don't remember.

22 Q. You might have but you don't recall?

23 A. Correct.

24 Q. Okay. Do you ever recall going to Louisiana
25 and speaking with him about Mr. Moreno's case?

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1 A. I don't remember who I talked to.

2 Q. Okay. But you did do that, you just don't
3 recall if you spoke with Mr. Clemons?

4 A. Correct.

5 Q. Okay. So, at this point, it looks like by
6 April 26, 2001 that Mr. Moreno is already contemplating
7 a sentence reduction, wouldn't you -- wouldn't you say?
8 He put your name down and his U.S. attorney's number
9 down.

10 MS. MIRANDA: Objection, form.

11 A. No.

12 Q. (BY MS. SCARDINO) You disagree with that?

13 A. Yes.

14 Q. Okay. You don't think it's on his mind --
15 Jesse Moreno's mind at this point, he's hoping to get
16 some kind of sentence deduction for the information that
17 he has to give you?

18 MS. MIRANDA: Objection, form.

19 MR. DOYLE: Asked and answered.

20 A. I think that's on every federal inmate's mind.

21 Q. (BY MS. SCARDINO) Okay. I would agree with
22 you on that.

23 A. Uh-huh.

24 Q. Exhibit 47. Exhibit 47 is a fax dated May
25 15th, 2001, and it's from the Harris County district

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1 attorney's office to FCC (sic) Beaumont low, requesting
2 permission for you and Mr. Bonds to meet with Ronald
3 Prible on May 17th, 2001. Do you see that?

4 A. I do.

5 Q. Okay. And you initiated this contact with
6 Mr. Prible, right, he didn't initiate it with you?

7 A. Correct.

8 Q. Did you tell Mr. Prible in advance that you
9 were coming?

10 A. Did I tell?

11 Q. Mr. Prible.

12 A. No.

13 Q. Okay. You just showed up?

14 A. Correct.

15 Q. Okay. Was he surprised to see you?

16 A. I don't know.

17 Q. And he was in custody at this time, right?

18 A. Correct.

19 Q. Okay. Did you advise him when you met with him
20 that he was a suspect in the Tirado/Herrera case?

21 A. I don't remember.

22 Q. You don't recall if you --

23 A. I don't remember exactly how we started the
24 conversation.

25 Q. Did you inform him that he had a right to

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1 counsel?

2 A. No.

3 Q. And did you encourage him to speak with you
4 about the Tirado and Herrera case?

5 A. That's not exactly how it went.

6 Q. Okay. How did it go?

7 A. It was a very short conversation.

8 Q. And what did the conversation consist of?

9 A. It was mostly Johnny talking. I don't think I
10 talked much at all.

11 Q. Okay. So, Johnny was asking questions about
12 the case?

13 A. No, not -- not a lot of questions.

14 Q. No? Well, you went over there -- you made the
15 whole trip to Beaumont for a reason, right? So, there
16 must have been some question that you all asked him?

17 A. Correct.

18 Q. Okay. But it was a short conversation?

19 A. It was.

20 Q. I'm going to go back to Exhibit 156. That's
21 the Rule 3.09 of the Texas Disciplinary Rules of
22 Professional Conduct. Do you have one?

23 A. That's the thick one?

24 Q. No, it's that one.

25 A. Oh.

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1 Q. Rule 3.09B states, "A prosecutor shall refrain
2 from conducting or assisting in a custodial
3 interrogation of an accused unless the prosecutor has
4 made reasonable efforts to be assured that the accused
5 has been advised of any right to, and the procedure for
6 obtaining, counsel and has been given reasonable
7 opportunity to obtain counsel." Do you see that?

8 A. I do.

9 Q. That was not done for Mr. Prible at that May
10 15th, 2001 meeting, as you just testified, correct?

11 MR. DOYLE: Objection.

12 A. What was not done?

13 Q. (BY MS. SCARDINO) He was not informed that he
14 had a right to counsel?

15 A. He was not.

16 Q. Now, a suspect's right to counsel is one of the
17 most important rights afforded a criminal defendant
18 under the constitution, would you agree?

19 A. Yes.

20 Q. Okay. If you look at Rule 3.09C, it says, "A
21 prosecutor shall not initiate or encourage efforts to
22 obtain from an unrepresented counsel -- or an
23 unrepresented accused a waiver of important pretrial,
24 trial or post trial rights." Do you see that?

25 A. I do.

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1 Q. Okay. But on that day that you met with
2 Mr. Prible on May 17th, 2001, you initiated that contact
3 and you encouraged him to answer your questions, did you
4 not?

5 A. That's not exactly how it went, no.

6 Q. That's not how it went?

7 A. No.

8 Q. Okay. On July 3rd, 2001, you met with Jesse
9 Moreno at the Federal Detention Center in Beaumont. Do
10 you recall that meeting?

11 A. Not by date specifically, no.

12 Q. Okay. Well, do you remember meeting with him
13 there?

14 A. Beaumont medium or low, which one did you say?

15 Q. At FDC Beaumont, the Federal Detention Center
16 in Beaumont.

17 A. In that medium or low? I don't know the
18 difference.

19 Q. Well, where did you have this meeting with
20 Mr. Moreno?

21 A. I don't remember. I don't remember which
22 location it was.

23 Q. Was it somewhere in Beaumont?

24 A. Yes.

25 Q. Or was it in Liberty County at a federal

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1 holding --

2 A. It was in Beaumont. I think it was in
3 Beaumont.

4 Q. You believe the first meeting that you had with
5 him was in Beaumont?

6 A. I think so.

7 Q. Okay. Did you meet with Mr. Moreno more than
8 once?

9 A. No. I mean, I remember meeting him in the
10 Harris County jail and in Beaumont in person one time.

11 Q. Now, in the Harris County jail, when was that
12 meeting?

13 A. When he testified.

14 Q. At the Jason Morales case?

15 A. Hermilio Herrero.

16 Q. At Hermilio Herrero. So, you recall meeting
17 with him in the Harris County jail just before that
18 trial, the Herrero trial?

19 A. Correct.

20 Q. Okay. Do you ever recall meeting with him in
21 Liberty County?

22 A. Not specifically.

23 Q. Okay. So, if you're meeting with a federal
24 prison inmate, you can't just show up and ask to see
25 them, right?

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1 A. Correct.

2 Q. You have to give the prison advance notice,
3 right?

4 A. Yes.

5 Q. You have to request to be able to see the --
6 the inmate?

7 A. It's a process.

8 Q. Right. And how long does that process usually
9 take?

10 A. Weeks, minimum.

11 Q. Okay. Because they have to arrange for the
12 prisoner to be available on that day?

13 A. Among a lot of other things.

14 Q. What else do they have to arrange for?

15 A. They had to have my Bar card. They had to have
16 driver's licenses. They had to have a letter. They had
17 to agree to when we wanted to come. It all had to be
18 organized. You couldn't just show up.

19 Q. And did you organize these meetings via the SIS
20 division at BOP Beaumont?

21 A. Johnny was in charge of that. I didn't really
22 organize them. He did.

23 Q. Okay. When I say the word SIS, do you -- do
24 you recall -- do you know what that means?

25 A. No.

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1 Q. Okay. The special investigative services unit
2 at the prison, does that ring a bell?

3 A. No. I know that there's a lady in charge of
4 helping them take care of their end but I don't remember
5 what the name was, the acronym.

6 Q. Okay. There was a lady in charge at FCI
7 Beaumont?

8 A. Yes.

9 Q. Okay. Does her -- was her name Dee Roberts?

10 A. You would ask Johnny that. He would know
11 better than I would.

12 Q. Okay. Do you recall any BOP employees over in
13 FCI Beaumont?

14 A. Do I recall names?

15 Q. Do you recall the names of them?

16 A. No.

17 Q. Does the name Lieutenant Clark ring a bell?

18 A. No.

19 Q. What about Gordon Harp?

20 A. No.

21 Q. Okay. So, it takes -- it takes several weeks
22 to -- to meet with an inmate. How did you request this
23 meeting with -- with Jesse Moreno? Would that have been
24 through Johnny Bonds?

25 A. I would have told Johnny to try and set it up.

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1 Q. Okay. Sometime after this April 4th letter, I
2 guess?

3 A. Yes.

4 Q. Okay. And you don't recall the location of the
5 meeting with him on July 3rd, 2001?

6 A. If it was July the 3rd.

7 Q. Okay.

8 A. I don't know what day it was.

9 Q. Okay. You don't recall where you were when you
10 met with him --

11 A. With Jesse?

12 Q. -- at that first meeting? Right.

13 A. I remember we went to the Beaumont federal
14 prison. I don't remember which one or where exactly we
15 met but I remember meeting with Jesse Moreno at least
16 one time in Beaumont.

17 Q. Okay. Possibly more?

18 A. I think it's just one.

19 Q. Okay. Was anyone else in the room with you
20 during this meeting?

21 A. With Jesse Moreno?

22 Q. Yes.

23 A. I don't think so.

24 Q. And you recorded part of that meeting, right?

25 A. I don't remember that.

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1 Q. Okay. I have a transcript of your interview.
2 It's Exhibit 54. Was it your practice to record
3 interviews with witnesses?

4 A. It was not.

5 Q. This was an unusual situation?

6 A. I didn't record very many.

7 Q. Do you recall the BOP guidelines for recording
8 visits?

9 A. No.

10 Q. Did you ever encounter any -- do you recall
11 ever encountering any pushback from a prison official if
12 you wanted to record an interview with an inmate?

13 A. No.

14 Q. Okay. Now, the transcript goes straight into
15 the interview here. There's not much small talk.
16 You'll see it says, "It's July 3rd. We're at the
17 Marshal's office in Beaumont."

18 Now, at this meeting, Mr. Moreno told you
19 about his friend, Nathan Foreman, right?

20 A. Who transcribed this?

21 MS. SCARDINO: Object --

22 A. You all or you all?

23 MS. SCARDINO: Objection, form.

24 Q. (BY MS. SCARDINO) This was produced in the
25 discovery.

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1 A. From whom?

2 Q. I believe from the DA's office. Okay. I'm
3 not -- I'm not -- did --

4 MS. SCARDINO: Okay. So, you have the --
5 the recording?

6 MR. RYTTHING: That's right.

7 Q. (BY MS. SCARDINO) Okay. So, Mr. Rytting
8 informed me that the recording was produced and that
9 Mr. Rytting's secretary or assistant at the time
10 recorded this.

11 A. Okay.

12 Q. I mean, transcribed it.

13 A. Okay.

14 Q. Okay. So, the DA's office produced the --

15 A. Tape.

16 Q. -- recording, yes. Okay. So, did you know
17 Nathan Foreman before you had this interview with Jesse
18 Moreno?

19 A. Did I know his name, yes.

20 Q. Okay. And -- because Jesse had told you -- had
21 mentioned him previously?

22 A. I don't remember how I first heard Nathan
23 Foreman's name.

24 Q. Okay. Let's look at Page -- Exhibit 54, Page
25 18. On the bottom part of the page, it says "KS,"

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1 that's you. It says, "And who was the other guy there?
2 Nathan Foreman?"

3 Jesse Moreno: "Nathan Foreman. He" --

4 Kelly Siegler: "Is he from Houston?"

5 Moreno says, "Yeah, we're all from
6 Houston."

7 And you say, "Beaumont medium, too?"

8 Okay. So, it looks like from this
9 transcript that you didn't know Mr. Foreman previously,
10 right?

11 A. Not necessarily.

12 Q. You might have known him before this?

13 A. I might have known him by name. I can't
14 remember.

15 Q. Because Jesse might have told you his name
16 previously?

17 A. No. I don't know how I found Nathan Foreman,
18 how I got his name first.

19 Q. If you look at Page 12 -- I'm sorry, Page 13,
20 the very top of the page, the second line, Jesse is
21 talking to you. He says, "There was me, him, Dominguez,
22 Ralph Dominguez and Nathan Foreman, the one I was asking
23 you about." Do you see that?

24 A. Uh-huh. Yes, ma'am.

25 Q. Does that refresh your memory as to whether

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1 Moreno made you aware of Nathan Foreman?

2 A. It does not.

3 Q. You still think you knew him previously for
4 some reason beyond Jesse Moreno?

5 A. Yes.

6 Q. But you can't tell me why?

7 A. The Jason Morales trial.

8 Q. You think Foreman was involved in the Jason
9 Morales trial?

10 A. I don't -- I don't know if he -- he didn't
11 testify. I don't know if he was involved. I can't
12 remember.

13 Q. Okay. Now, at this meeting, Jesse Moreno spoke
14 with you about a murder confession he had heard from
15 Hermilio Herrero. Do you remember that?

16 A. Yes.

17 Q. Okay. And he said that Herrero confessed to
18 himself, Moreno, to Dominguez and to Nathan Foreman in
19 1999 when they were all incarcerated together in
20 Beaumont. Do you remember that?

21 A. Yes.

22 Q. And two days after this meeting with Moreno on
23 July 3rd, you asked Detectives Davis and Holtke to
24 review the audiotape of that meeting. Do you remember
25 that?

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1 A. To review the audiotape that I took?

2 Q. Yes.

3 A. So --

4 Q. The audiotape that we just referenced, Exhibit
5 54.

6 A. Okay.

7 Q. And to refresh your memory, I have Exhibit 55,
8 which is a supplemental report from the Harris County
9 sheriff's department, and it mentions how you had asked
10 Detectives Davis and Holtke to review the audiotape. Do
11 you see that?

12 A. Okay.

13 Q. Okay. And you accepted charges against Herrero
14 that day, right?

15 A. This day?

16 Q. Yes. I'm sorry. Yeah, you -- you accepted
17 charges against Hermilio Herrero on this day, on July
18 5th, 2001, right? That's what it says here in this
19 report?

20 A. Where does it say that?

21 Q. Let's see. At the very last line, "Assistant
22 District Attorney Siegler then stated she would accept
23 charges of the murder on Hermilio Herrero, Jr., date of
24 birth 10-7-1969," right?

25 A. It says that I would accept the charges. It

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1 doesn't say on what date.

2 Q. Okay. Well, it's talking about a conversation
3 that you had with these detectives on July 5th, 2001.
4 Do you see that on the very first line?

5 A. I do.

6 Q. And at the end of talking about that
7 conversation you had with them, Detective Davis states,
8 "I informed Siegler that the information the witness had
9 provided was information that matched the details of
10 what we knew them to be. Assistant District Attorney
11 Siegler then stated she would accept charges of murder
12 on Hermilio Herrero, Jr., date of birth 10-7-1969." Do
13 you see that?

14 A. I do.

15 Q. Does that refresh your memory as to whether you
16 accepted charges against Mr. Herrero on July 5th, 2001?

17 A. It doesn't mean that I accepted the charges on
18 July 5th. It could have been the following day. It
19 could have been the following week.

20 Q. Okay.

21 A. I did accept the charges.

22 Q. Okay. You also accepted charges against
23 Mr. Prible that day, right?

24 A. What day?

25 MS. MIRANDA: Objection, form.

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1 Q. (BY MS. SCARDINO) July 5th, 2001.

2 A. I don't remember.

3 Q. You don't recall when charges were accepted
4 against Mr. Prible?

5 A. I do not.

6 Q. Now, before you charge -- accepted charges
7 against Herrero, Hermilio Herrero, did you check to see
8 if he was even incarcerated with Moreno, Dominguez and
9 Foreman on the date he supposedly confessed to them?

10 A. I would have had Johnny Bonds check on that.

11 Q. And what did he find out?

12 A. I'm assuming that it was consistent with the
13 information we got from Jesse Moreno.

14 Q. Because if it was inconsistent, it would have
15 been improper to accept charges against Mr. Herrero
16 based entirely on Jesse Moreno's conversation with you,
17 right?

18 A. We would have needed to look into it further.

19 Q. And when you accepted charges -- I will -- I
20 will represent to you that charges were accepted against
21 Prible the same day they were accepted against Hermilio
22 Herrero.

23 A. You need to show me something.

24 Q. Okay. Okay. Exhibit 57, the first page, at
25 the top, it says date prepared July 5th, 2001, felony

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1 charge capital murder against Mr. Prible. Do you see
2 that?

3 A. Okay. Yes, I see that.

4 Q. Okay. So, you agree that charges were accepted
5 against Mr. Prible on July 5th, 2001, this -- do you
6 agree with that?

7 A. Yes.

8 Q. And at that July 3rd, 2001 meeting, you and
9 Mr. Moreno discussed Nathan Foreman, you saw? Do you
10 remember the testimony -- or the recording I just showed
11 you where you discussed Nathan Foreman?

12 A. His name was mentioned.

13 Q. Yes.

14 A. Nathan Foreman's name was mentioned, yes.

15 Q. Okay. And at that July 3rd, '01 meeting, did
16 Moreno tell you that Nathan Foreman had heard a
17 confession by Ronald Prible?

18 A. Ask me that again.

19 Q. At that meeting that you had with Mr. Moreno,
20 at some point during that meeting, did Mr. Moreno inform
21 you that Mr. Foreman, Nathan Foreman had heard a
22 confession by Mr. Prible?

23 A. I don't remember what the details were, what
24 Jesse Moreno told me that day.

25 Q. So, he might have told you that but just can't

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1 recall?

2 A. I cannot.

3 Q. Now, if you look at Exhibit 56, Exhibit 56 is a
4 probable cause affidavit dated July 5th, 2001 for the
5 arrest of Mr. Prible, and the affiant is Curtis Brown.
6 And you testified in the Temple case that you would
7 often type up the probable cause affidavit for the
8 detectives to sign; is that right?

9 A. Correct.

10 Q. Is that -- was that the case here, did you type
11 up this probable cause affidavit?

12 A. I don't know because it's signed by Marcy.

13 Q. Okay. So, you -- who is Marcy?

14 A. A fellow prosecutor that worked in Special
15 Crimes the same time I did.

16 Q. Okay. So, you don't know if you typed up this
17 probable cause affidavit?

18 A. I don't know for sure.

19 Q. Okay. Do you see anything new in that probable
20 cause affidavit that you all didn't have against
21 Mr. Prible in 1999?

22 A. I didn't know what they had in 1999. It wasn't
23 my case then.

24 Q. Okay. So, you're not denying that there's
25 nothing new in that probable cause affidavit?

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1 A. I don't know what they had in '99. It wasn't
2 my case then.

3 Q. Okay. Did you reach out to Mr. Foreman after
4 your July 3rd, 2001 visit with Mr. Moreno?

5 A. Ask me again.

6 Q. Did you reach out to Mr. Foreman after your
7 July 3rd, 2001 visit with Jesse Moreno?

8 A. No.

9 Q. You didn't?

10 A. I didn't reach out to him, no.

11 Q. Did he reach out to you?

12 A. Yes.

13 Q. Okay. In what form? How did he reach out to
14 you? Did he call you?

15 A. He called. He might have written. I don't
16 remember.

17 Q. If he had written to you, that would have been
18 kept in your file, right?

19 A. Yes. We're talking about the Herrero file
20 because you keep talking about all these letters like
21 they belong to Prible, and they do not.

22 Q. Well, some of them were found in the Prible
23 file, which we'll get to that in a little bit.

24 But -- okay. So, Foreman reached out to
25 you, contacted you, you believe?

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1 A. Yes.

2 Q. Okay. Might have written. Might have made a
3 phone call.

4 Exhibit 88 is a criminal history report for
5 Nathan Foreman printed out by Johnny Bonds. And all I'm
6 interested in is -- is the date.

7 MS. SCARDINO: Do you have one?

8 MS. MIRANDA: I don't. I'm sorry.

9 Q. (BY MS. SCARDINO) The date you'll see at the
10 top is August 7th, 2001, and if you go down a little
11 more, it says that Johnny Bonds had printed it out. Do
12 you see that?

13 A. I do.

14 Q. Okay. Now, this criminal history report, was
15 this something that you all would typically run before
16 you met with a potential witness or -- with a potential
17 witness?

18 A. Or a potential suspect?

19 Q. Or a potential suspect.

20 A. Yes.

21 Q. That was my next question.

22 A. Yes.

23 Q. Okay. And so, this was typed -- this was
24 searched on August 7th. And then on August 8th, the
25 following day, you and Mr. Bonds and Foreman met in

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1 person; isn't that right?

2 A. I don't remember the date.

3 Q. Okay. Do you recall this meeting? Do you
4 recall meeting with Mr. Foreman at FCI Beaumont?

5 A. In Beaumont?

6 Q. Uh-huh, or just ever.

7 A. I remember meeting with Nathan Foreman at the
8 Federal Detention Center in downtown Houston.

9 Q. Okay. I'm going to show you Exhibit 108-2,
10 beginning at 108-2.

11 MR. DOYLE: Thanks.

12 MS. SCARDINO: Do you have that?

13 MS. MIRANDA: I don't. I feel like I
14 should but I don't.

15 Q. (BY MS. SCARDINO) In this meeting -- and you
16 see it's dated -- these are your notes, correct?

17 A. They are.

18 Q. Okay. And up at the top, it's dated August
19 8th, 2001?

20 A. Yes.

21 Q. So, you took the notes on this day, right?

22 A. Yes.

23 Q. Okay. And I'd like to have you first just read
24 these notes into the record so we can have a correct
25 interpretation of them since it's your handwriting.

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1 A. Exhibit 108-2, "Nathan Foreman, August 8th, '01
2 at the Federal Detention Center. Been here two days?
3 Why. On deferred adjudication for dope and thought CC
4 with the 5 year fed, plus 3 years supervised" -- I don't
5 know if that's "after" or "often." "Out 2004. Wife
6 called me. Jesse and me at B" -- that's Beaumont --
7 "medium together. Prible" -- I think that's dis -- or
8 "disciplinary seg at medium, also known as the hole. I
9 was a trustee about six and a half months. Prible was
10 an inmate. Got assigned for marijuana. Disciplinary
11 years. Around August of 2000. Medium" -- I think that
12 says "range" up at the top right-hand side. "Prible put
13 in seg for dirty urine. Contact around January of '01.
14 Prible on 300 to 400 range disciplinary seg. Prible
15 with Bear and Chuy on seg. Prible talked about dope.
16 Major connection with dope because owed money. Prible's
17 family killed. No remorse. Prible weird.
18 Schizophrenic."

19 Over to the right, squared off, it says,
20 "Beaumont medium 2001. Talked about two times. Also
21 present A. J., a white male, Bubba, a white male, Bear,
22 a white male, Chuy, a white male. Dirty" something
23 "boys. Two times? Later. Last saw Prible months ago
24 in medium. Regarding Herrero, we were high, me,
25 Dominguez, defendant, Jesse, who was down and who was

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1 snitches. Regarding battle wounds. I got shot in the
2 hand. I thought BS. Defendant guy owed me money. Ran
3 into the club." "Woods" or "words." "Drove off.
4 Carpet in a van. Dude who owed him money was talking
5 BS. Somebody else left. I cut dude's throat, still
6 alive and a hammer."

7 Fourth page, "Grabbed from behind.
8 Complaining witness Alfred or Albert. Rolled dude up in
9 the carpet, ditch. Dumpster? I thought BSing. Jesse
10 and I talked regarding it. Afraid to get stuck in
11 Beaumont."

12 Q. Okay. And this Jesse that Mr. Foreman is
13 referencing in this interview with you is Jesse Moreno,
14 right?

15 A. Yes.

16 Q. And during this August 8th, 2001 interview with
17 you, Mr. Foreman discusses both the Prible and the
18 Herrero cases, right?

19 A. He does.

20 Q. Okay. And he discusses various informants --
21 or various other inmates, himself, Rafael Dominguez,
22 right, you saw that name?

23 A. I did.

24 Q. Okay. And Jesse Moreno, right?

25 A. Among others.

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1 Q. Now, Mr. Bonds was at this meeting with you,
2 right?

3 A. Yes.

4 Q. Okay. And what was your take on Mr. Foreman
5 when you met with him?

6 A. I didn't believe him.

7 Q. Why didn't you believe him?

8 A. I didn't believe him.

9 Q. Okay.

10 A. Neither one of us did. We walked out there
11 saying we didn't believe a word he had to say.

12 Q. And Mr. -- Mr. Bonds actually asked him what
13 Prible looked like, right, and he couldn't describe him?

14 A. I don't remember that part. I'm not arguing
15 with you but I don't remember that part.

16 Q. Okay. But you didn't remember anything that he
17 said as far as Prible or Herrero were concerned, you
18 thought he was a liar?

19 A. I -- I remember some of the things that Nathan
20 Foreman said. I also thought he was lying.

21 Q. Okay. So, after you left that meeting or as
22 you were leaving, did you tell Foreman, "Look, I don't
23 believe anything you're saying. Get out of here. Get
24 lost"?

25 A. I didn't tell him what I thought.

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1 Q. You didn't? Did you tell him to contact you if
2 he had further information?

3 A. I don't remember saying that.

4 Q. Okay. Would you have wanted him to contact you
5 again with more information if you knew he was a liar?

6 A. No.

7 Q. That would have been improper to use a witness
8 that you knew was lying, right?

9 A. I never used him as a witness, contrary to what
10 your petition says.

11 Q. Now, Exhibit 152, this is a difficult exhibit
12 to read. It was produced this way but these are
13 different telephone memos from your file. One of them
14 is dated August 13th. I mean, they're really difficult
15 to read.

16 A. Yeah. You want to just point it to me?

17 Q. Yeah. I'd give you a better one if I had one
18 but this is how they were produced. Let's see. We
19 might -- actually, at a break, we might have to show you
20 on the computer. It might be easier to read.

21 I'll -- I'll represent to you what -- the
22 question that I'm going to ask about, and I'll show
23 you -- I'm happy to show it to you --

24 A. Okay.

25 Q. -- on the screen. This was produced from your

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1 file by the DA's office in August of 2016. And it's
2 a -- there's a phone message on there showing Alan
3 Percely -- Percely, who was Nathan Foreman's attorney.
4 Do you -- do you recall Mr. Percely?

5 A. Now that you mentioned it, yes.

6 Q. I might be saying his name wrong. Okay.

7 A. He was as credible as Nathan.

8 Q. He was as credible as Nathan?

9 A. Uh-huh.

10 Q. Okay. And what do you mean by that?

11 A. Just what I said.

12 Q. Just a liar?

13 A. Yep.

14 Q. Okay. And he called you on August 13th, 2001
15 about testifying -- about having Nathan testify on the
16 federal trial, right?

17 A. He might have. I don't remember.

18 Q. Okay. If -- if, in fact, this -- this phone
19 message shows that, you wouldn't disagree with that,
20 right?

21 A. No.

22 Q. Okay. Did you call Percely back and speak with
23 him?

24 A. I don't remember.

25 Q. Okay. At some point, you must have spoken with

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1 him if you knew that he was lying, right?

2 A. Which one?

3 Q. Percely.

4 A. To be nice maybe.

5 Q. How did you determine that he was a liar?

6 A. From years of working with him.

7 Q. So, you knew him before this case?

8 A. Alan Percely, yes.

9 Q. Yeah. Okay. Okay. Nine days after you speak
10 with Mr. Foreman, the Prible indictments were prepared.
11 That's Exhibit 60.

12 MS. SCARDINO: We'll take a break right
13 after this.

14 Q. (BY MS. SCARDINO) You see the first page of
15 this Exhibit 60, it says date prepared August 17th,
16 2001. So, after speaking with Foreman, did you believe
17 you had probable cause to present the case to the grand
18 jury for indictment?

19 A. My decision to decide what to do with the
20 Prible case had no bearing and nothing to do with the
21 conversation I had with Nathan Foreman.

22 Q. Okay. Why did you suddenly decide to charge
23 Mr. Prible and indict him for capital murder if there
24 was no new evidence since 1999 other than this
25 conversation that you had had with Mr. Foreman?

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1 A. One more time, I don't know what they had in
2 1999. It could have been completely sufficient in 1999
3 to move forward but I didn't have the case then. When I
4 got the case, I wanted to be thorough, which included
5 talking to Nathan Foreman, which I thought would be a
6 waste of time and it turned out to be a waste of time.
7 Irrespective of that, I made a decision to move forward
8 on the case against Ronald Jeffrey Prible.

9 Q. Okay. Did you disclose to Mr. Prible's defense
10 attorney that you had spoken with Mr. Foreman on August
11 8th, 2001?

12 A. Mr. Prible's attorney, Terry Gaiser?

13 Q. Uh-huh.

14 A. We talked about Nathan Foreman. I don't know
15 exactly if I told him about that conversation but we did
16 discuss Nathan Foreman.

17 Q. I'm asking you if you told Mr. Gaiser or
18 Mr. Wentz if you -- about the substance of your meeting
19 with Mr. Foreman on August 8th, 2001?

20 A. I think I did.

21 Q. And you would have -- did you show him your
22 notes from that meeting?

23 A. They were in the file.

24 Q. But he wasn't allowed to see your work product
25 notes, was he?

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1 A. Those weren't -- that's not work product. My
2 notes were in the file. Notes are notes. They're in
3 the file.

4 Q. So, should they all be -- all your notes --

5 A. Yes.

6 Q. -- be viewable --

7 A. Yes.

8 Q. -- to the defense counsel?

9 A. Yes.

10 Q. Okay. So, you're saying that all of your --
11 any -- any of your notes that were contained in the file
12 would have been disclosed to defense counsel?

13 A. My notes would have been in the open file.

14 Q. Okay. So, you didn't take any notes out
15 saying -- claiming work product protection over them
16 before the defense came to review the file?

17 A. Not that I remember, no.

18 Q. Okay.

19 MS. SCARDINO: Let's take a short break and
20 go off the record.

21 THE VIDEOGRAPHER: The time is 11:23. We
22 are off the record.

23 (Short recess.)

24 THE VIDEOGRAPHER: This is the beginning of
25 file 3. The time is 11:43. We are on the record.

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1 Q. (BY MS. SCARDINO) Ms. Siegler, if you'll take
2 a look at Exhibit 154-7 again, the policy manual. The
3 basic function of a Grand Jury is to determine whether
4 there's sufficient evidence to warrant an indictment,
5 right?

6 A. Yes.

7 Q. Would you agree? Okay. And if you look at
8 Page 7 of Exhibit 154, it says on there, "More
9 specifically, the Grand Jury should believe that there
10 is probable cause that a particular individual is guilty
11 of a particular crime from evidence that will be
12 admissible in a court," right? And we talked a little
13 while ago about probable cause.

14 A. Correct.

15 Q. Okay. Exhibit 154-7 also says that, "Although
16 Texas law does not so require, the evidence should be of
17 such a nature that there is a reasonable likelihood a
18 jury would convict. It will be the policy of our office
19 to recommend a true bill only if there is such a
20 reasonable likelihood of conviction." Do you see that?

21 A. I do.

22 Q. Okay. So, we can presume, because this case
23 wasn't presented to the Grand Jury in '99, that the DA's
24 office did not believe, based on the evidence they had
25 at that time, that there would have been a reasonable

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1 likelihood of conviction, right?

2 MS. MIRANDA: Objection, form.

3 A. We cannot presume that.

4 Q. (BY MS. SCARDINO) You disagree with that
5 statement?

6 A. I absolutely disagreement with that statement.

7 Q. Okay.

8 (Off the record.)

9 Q. (BY MS. SCARDINO) And continuing on Exhibit
10 154, Page 7, it says -- I'm sorry -- yeah, if the
11 prosecution believes that the defendant is probably
12 guilty, that there is sufficient legally admissible
13 evidence to convict and there is a likelihood of
14 conviction, the prosecutor should recommend a true bill.
15 If those circumstances do not exist, the prosecutor
16 should recommend a no bill.

17 And my question for you is why would a
18 prosecutor present a case to the Grand Jury and
19 recommend a no bill as opposed to presenting the case
20 to -- or as opposed to not presenting the case to the
21 Grand Jury at all?

22 MR. DOYLE: Objection.

23 A. Where did you read that? I couldn't find it
24 fast enough.

25 Q. (BY MS. SCARDINO) Let me find it on the page

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1 for you. Okay. The third paragraph, second half. Are
2 you on -- yeah. Right there.

3 A. Okay.

4 Q. "If the prosecution believes," do you see that?

5 A. I do.

6 Q. "If the prosecution believes the defendant is
7 probably guilty, that there is sufficient legally
8 admissible evidence to convict and there is a likelihood
9 of conviction, the prosecution should recommend a true
10 bill. If those circumstances do not exist, the
11 prosecutor should recommend a no bill." Do you see
12 that?

13 A. I do.

14 Q. And my question to you is why would a
15 prosecutor present a case to the Grand Jury and
16 recommend a no bill as opposed to not presenting the
17 case to the Grand Jury at all?

18 A. Because there were some cases, under office
19 policy, that you always took them to a Grand Jury for a
20 Grand Jury to decide, for example, cop shootings.

21 Q. Okay.

22 A. And at the end of that presentation, it would
23 be the prosecutor's duty and obligation to make that
24 recommendation.

25 Q. Okay. And where -- is that the general rule

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1 for capital murders or just for cop shootings?

2 A. I know that you -- you had to take all cop
3 shootings into the Grand Jury. You didn't have to take
4 all murders.

5 Q. Okay. Looking at Page 154-12, the second to
6 last paragraph, it says, "It's better to build a strong
7 case or to dispose of a weak case by no bill than to be
8 embarrassed at trial time."

9 A. Okay. Wait. Second to the last paragraph?

10 Q. Second to the last paragraph.

11 A. That starts with "discuss" here?

12 Q. Yes. The next sentence.

13 A. Okay. Go ahead.

14 Q. "It is better to build a strong case or to
15 dispose of a weak case by a no bill than to be
16 embarrassed at trial time. The Grand Jury is the proper
17 forum to determine whether or not there is a reasonable
18 possibility of success at trial." Do you see that?

19 A. I do.

20 Q. Okay. So, if there's not sufficient legally
21 admissible evidence to convict and there's not a
22 likelihood of conviction, even if the prosecutor herself
23 believes that the defendant is guilty, the prosecutor
24 should either recommend a no bill or not present the
25 case to the Grand Jury in the first place, do you agree

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1 with that statement?

2 A. That's a long question.

3 Q. Okay. Let's -- let's break it up.

4 If there's not sufficiently legal --
5 sufficient legally admissible evidence to convict and
6 there is not a likelihood of conviction, I take this to
7 read that even if the prosecutor herself believes that
8 the defendant is guilty, the prosecutor should either
9 recommend a no bill or not present the case to the Grand
10 Jury in the first place. Do you agree?

11 A. I do.

12 Q. Now, in this case, with all of the evidence
13 that law enforcement had in 1999, which you claim you
14 don't recall what -- what evidence that was, but with
15 all that evidence that they had in 1999, the DA must not
16 have believed that there was sufficient legally
17 admissible evidence to convict Prible of the five
18 murders at that time, right?

19 MS. MIRANDA: Objection, form.

20 A. I do not agree with that statement.

21 Q. (BY MS. SCARDINO) You don't agree with that
22 statement?

23 A. No, ma'am.

24 Q. Even though this was a case of an entire family
25 being murdered, three young children, don't you think

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1 the DA's office would have prosecuted that as soon as
2 they had -- they had the evidence needed to do so?

3 A. Not --

4 MS. MIRANDA: Objection, form.

5 THE WITNESS: Sorry.

6 A. Not necessarily.

7 Q. (BY MS. SCARDINO) In fact, back in 1999, the
8 DA's office didn't even present the case to the Grand
9 Jury, did they?

10 A. I don't think they did, no.

11 Q. Okay.

12 THE WITNESS: Is that the same phone? Can
13 you unplug it?

14 MS. SCARDINO: Let's go off the record real
15 briefly to fix that.

16 THE VIDEOGRAPHER: The time is 11:50.
17 We're off the record.

18 (Off the record.)

19 THE VIDEOGRAPHER: This is the beginning of
20 file 4. The time is 11:52. We are on the record.

21 Q. (BY MS. SCARDINO) Okay. So, you just
22 testified that you do not believe they presented it to
23 the Grand Jury in 1999; is that right?

24 A. I don't think they did. That's correct.

25 Q. Okay. When did the DA's office finally present

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1 this case to the Grand Jury?

2 A. When I did.

3 Q. You were the one that presented it?

4 A. Yes.

5 Q. And do you recall the date that you did so?

6 A. August, 2001.

7 Q. Okay. Do you recall the -- was it after you
8 had met with Mr. Foreman August 8th?

9 A. Yes.

10 Q. It was after you met with him. Okay. And was
11 there only one Grand Jury that heard this case?

12 A. Yes.

13 Q. Was that the only one?

14 A. Yes.

15 Q. All right. Did you prepare any sort of a
16 witness list for the Grand Jury?

17 A. No.

18 Q. Did you present any witnesses to the Grand
19 Jury?

20 A. No.

21 Q. And is that a common practice of yours to go
22 into a Grand Jury without any witnesses?

23 A. Yes.

24 Q. Did you testify at the Grand Jury about your
25 conversations with Foreman and Moreno?

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1 A. I know I didn't about Foreman.

2 Q. But you spoke with the Grand Jury about your
3 conversation with Moreno?

4 A. Having to do with the Prible case?

5 Q. Yes.

6 A. No.

7 Q. Did you present these two cases, Herrero and
8 Prible, on the same day?

9 A. Yes.

10 Q. In the same -- I mean, was it like back to
11 back? How does -- how does it work when you go into the
12 Grand Jury?

13 A. You go in on your scheduled morning with all
14 the cases that you have and present them, go outside
15 while they vote, see if they have any questions and then
16 do the next one.

17 Q. Okay. So, your -- your testimony is that you
18 spoke with the Grandy Jury about Moreno --

19 A. No.

20 Q. -- with respect to the Herrero case?

21 A. I presented the Herrero case and I presented
22 the Prible case.

23 Q. Okay.

24 A. And maybe others. I don't remember.

25 Q. Okay. And when you presented those two cases

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1 to the Grand Jury, did you tell the Grand Jury that
2 there were jailhouse informants in those cases that
3 would testify as to a confession?

4 A. Can we divide up the cases and ask the question
5 specifically?

6 Q. Sure. With respect to Prible.

7 A. Okay.

8 Q. Yes. Did you tell the Grand Jury that there
9 was a jailhouse informant that would testify that Prible
10 confessed to the crime?

11 A. No.

12 Q. With respect to Mr. Herrero, did you tell the
13 Grand Jury that there was a jailhouse informant who
14 would testify that Mr. Herrero confessed to the crime?

15 A. Yes.

16 Q. Was there a court reporter present at that
17 Grand Jury meeting?

18 A. No. Sorry. No.

19 Q. You did not request that --

20 A. I don't think so, no.

21 Q. -- a court reporter be present?

22 A. I don't think so, no.

23 Q. Was that common practice in the DA's office
24 to -- to not have a court reporter present to transcribe
25 those proceedings?

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1 A. Correct. You only had a court reporter present
2 if you had a witness you were presenting.

3 Q. Okay. Now, you could have a court reporter
4 present if you weren't having -- presenting a witness
5 but you just didn't in this case?

6 A. I don't think we ever had a court reporter
7 present if we weren't presenting a witness.

8 Q. Okay. Let -- sorry. Let me ask you a question
9 so it's easier to follow.

10 Was there anything preventing you from
11 asking a court reporter to be present in a Grand Jury
12 proceeding in which you were not presenting any
13 witnesses?

14 A. Yes.

15 Q. What was preventing you from doing that?

16 A. Grand Jury proceedings are secret, so, you
17 don't want a record of what's going on when they vote,
18 when they talk about things. You only have a court
19 reporter present when there's a witness.

20 Q. Okay. But -- and I understand the Grand Jury
21 proceedings are secret. There would never be a court
22 reporter present to take down what you were telling the
23 Grand Jury before they went into their secret
24 deliberations?

25 A. I don't want to say never but not that I

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1 remember.

2 Q. Okay. Was there anything preventing you from
3 having a court reporter take down the testimony, for
4 lack of a better word, the -- the statements that you
5 were making to the Grand Jury about these cases before
6 they went into their private deliberations?

7 A. Well, you would have to find the court
8 reporter. They weren't there. They don't stay in the
9 Grand Jury room.

10 Q. You would have to arrange for a court reporter
11 to be present?

12 A. Correct.

13 Q. And those court reporters are -- that
14 transcribe the -- the Grand Jury proceedings, those
15 worked at the DA's office, right?

16 A. They worked in the Grand Jury division, yes.

17 Q. Right. Like Javier Leal, I believe was one?

18 A. Yes.

19 Q. Okay. So, what you would need to do is make
20 arrangements for one of them to be present when you
21 presented the case if you wanted the testimony
22 transcribed?

23 A. Yes.

24 Q. Okay. But you did not do that in this case?

25 A. Which case?

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1 Q. In the Prible case.

2 A. I did not.

3 Q. And you did not do that in the Herrero case?

4 A. I did not.

5 Q. So, there is no record whatsoever as to what
6 you told the Grand Jury when you presented the Prible
7 matter to that Grand Jury?

8 A. There is not.

9 Q. And there is no record whatsoever regarding
10 what you told the Herrero Grand Jury about Herrero's
11 case in that Grand Jury proceeding?

12 A. There is not.

13 Q. Now, a prosecutor has a duty to disclose all
14 material defensive facts to the Grand Jury, correct?

15 A. Yes.

16 Q. Okay. Did you tell the Grand Jury in the
17 Prible matter that you had spoken to Nathan Foreman
18 about Mr. Prible's case?

19 A. No.

20 Q. Did you tell the Grand Jury that a jailhouse
21 informant tried to come -- or came to you to try to set
22 up Mr. Prible for this murder before Mr. -- before he
23 had even met Mr. Prible?

24 MS. MIRANDA: Objection, form.

25 A. I don't understand that question.

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1 Q. (BY MS. SCARDINO) Did you tell the Grand Jury
2 that an inmate, Nathan Foreman, had come to you and
3 tried to set up Mr. Prible, saying that he -- Mr. Prible
4 had confessed to him but that you had determined that
5 Mr. Foreman was lying about that?

6 A. I disagree with the assertion that Nathan --
7 Nathan Foreman tried to set him up. I agree with the
8 statement I made earlier that I did not believe Nathan
9 Foreman was being credible, and I agree with the
10 statement I said earlier that Nathan Foreman's interview
11 had nothing to do with the evidence that existed against
12 Jeffrey Prible.

13 MS. SCARDINO: Okay. Objection,
14 nonresponsive.

15 Q. (BY MS. SCARDINO) My question -- I'll restate
16 it.

17 Did you -- when you were presenting the
18 case against Mr. Prible to the Grand Jury, did you tell
19 the Grand Jury about your meeting and the substance of
20 that meeting with Nathan Foreman?

21 A. No.

22 Q. Now, if you had a defendant that you were going
23 to charge in a Harris County case who was already
24 serving a sentence in a federal institution, how would
25 you go about getting custody of that person so you could

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1 try them in your state case?

2 A. You have to follow the federal procedures.

3 Q. And that's the federal detainer rule?

4 A. Yes.

5 Q. Okay. Do you have to wait until their federal
6 sentence is up to try them in the state case?

7 A. That depends.

8 Q. Okay. And what does it depends on?

9 A. All kinds of things. I never did understand
10 when it didn't and when it did.

11 Q. Okay. In the Hermilio Herrero case, you didn't
12 need to wait for his federal sentence to be up before
13 you tried him in the state case, right?

14 A. I did not.

15 Q. And the same with Mr. Prible's case, you didn't
16 have to wait until his federal sentence was up to try
17 him in the state case, right?

18 A. Correct.

19 Q. Okay. If you look at Exhibit 154-2, it
20 addresses how to obtain persons from other
21 jurisdictions. Section -- actually, it's the next page,
22 154-3. Section C says, "If a prisoner in federal
23 custody has been sentenced by the federal court, we may
24 secure the custody of the prisoner by virtue of the
25 interstate agreement on detainers, Article 51.14 of the

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1 Texas Code of Criminal Procedure." And that's the
2 detainer agreement that you were just mentioning?

3 A. Yes.

4 Q. Okay. And down at the bottom, Section D, it
5 says, "An individual who has been indicted in Texas but
6 is in custody and has been sentenced in a foreign state
7 or under federal law has a detainer placed on him in the
8 foreign state by virtue of the warrant issued by the
9 State of Texas. It acts as notice to the custodial
10 official of such pending warrant and when the prisoner
11 has satisfied his time in the foreign state, the
12 custodial official will notify the law enforcement
13 agency which requested the detainer. In Harris County,
14 that is the Harris County sheriff's office. The effect
15 of the interstate agreement on detainers allows the
16 custodial official to temporarily seek custody of the
17 prisoner to allow prosecution of the offense giving rise
18 to the detainer prior to the satisfaction of the
19 prisoner's present sentence. The proceedings may be
20 initiated by either the prisoner or by the prosecutor of
21 the jurisdiction which requested the detainer on the
22 prisoner."

23 Now, did you request that a detainer be
24 placed on Mr. Prible so he could be returned to Harris
25 County to face capital murder charges?

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1 A. Yes.

2 Q. And when did you do that?

3 A. I don't remember.

4 Q. You don't? You didn't do it immediately,
5 though, right?

6 A. Immediately meaning when?

7 Q. After he was charged in the capital murder.

8 A. No.

9 Q. Because first he was charged in -- July 5th,
10 2001, as we established, right?

11 A. Right.

12 Q. And after that, he was moved from the FCI
13 Beaumont low to FCI Beaumont medium because his points
14 went up, right?

15 A. I don't know anything about that.

16 Q. You don't know that he was moved from the low
17 to the medium?

18 A. I didn't keep up with that. I don't remember
19 when he was moved or why he was moved.

20 Q. Okay. But you don't disagree that he was moved
21 from the low to the medium after he was charged in this
22 case?

23 A. I don't know.

24 Q. Okay. Now, where in the operations manual did
25 it say -- or does it say that it's -- the interstate

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1 agreement on detainers is optional or that it can be
2 done at a later time rather than immediately after the
3 defendant is charged? Is there any -- is there any
4 rule?

5 A. It says indicted, not charged.

6 Q. And -- after the person is indicted?

7 A. There's a big difference.

8 Q. Okay. Well, in this case --

9 A. And you know that.

10 Q. In this case, the indictment was August --

11 A. 29th.

12 Q. -- 2001?

13 A. Right.

14 Q. Okay. So, was it your practice to indict and
15 then not have the defendant moved to Harris County until
16 later?

17 A. No.

18 Q. That was unusual?

19 A. That was not my practice.

20 Q. Okay. With Mr. Herrero, did you have him moved
21 immediately to Harris County after he was indicted?

22 A. I don't remember. I'd have to see the
23 paperwork.

24 Q. Okay. Now, Curtis Brown was involved in the
25 Hermilio Herrero case as well, right?

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1 A. Yes.

2 Q. And the same informants were involved in the
3 Herrero case as were involved in the Prible case, right?

4 A. No.

5 Q. Well, Nathan Foreman was involved in both
6 cases, right?

7 A. No.

8 Q. Well --

9 A. You all say Nathan Foreman was involved in the
10 Prible case. He was not.

11 Q. He spoke with you about the Prible case, right?

12 A. And he lied. He wasn't involved.

13 Q. And he spoke --

14 A. You want to make him involved. He wasn't
15 involved.

16 Q. And he spoke also with you about the Herrero
17 case, right?

18 A. Yes.

19 Q. And he ended up not testifying again -- with
20 you -- or for you in that case, right?

21 A. That's right.

22 Q. Okay. But you, nevertheless, wrote him a Rule
23 35 letter to his prosecutor, right?

24 A. I did.

25 Q. Okay. Jesse Moreno talked with you about

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1 Mr. Prible's case and Mr. Herrero's case, correct?

2 A. He did.

3 Q. Rafael Dominguez spoke with you about
4 Mr. Herrero's case and his name was also listed -- he --
5 he -- his name came up in that conversation that you had
6 in August 8th, 2011 with Mr. Foreman, right?

7 A. With Nathan Foreman. Ralph Dominguez was not
8 involved in the Prible case.

9 Q. Okay. But he was mentioned in that
10 conversation that you were having with Mr. Foreman on
11 August 8th, 2001?

12 A. By Nathan Foreman, who was lying.

13 Q. Okay.

14 A. So, that doesn't make him involved.

15 Q. I understand.

16 MS. SCARDINO: I'm going to -- objection,
17 nonresponsive.

18 Q. (BY MS. SCARDINO) My question is Rafael
19 Dominguez was mentioned by Nathan Foreman during that
20 conversation you had with him on August 8th, 2001,
21 right?

22 A. That does not make him involved.

23 Q. Are you going to refuse to answer the question?

24 A. No.

25 Q. Okay. One more time. Mr. Dominguez's name was

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1 mentioned by Nathan Foreman when he met with you on
2 August 8th, 2001, correct?

3 A. It was.

4 Q. Now, Exhibit 66, if you look at Exhibit 66,
5 it's dated September 4th, 2001, and it's a letter from
6 Bert Graham at the Harris County DA's office
7 including -- enclosing the forms for the interstate
8 agreement on detainers for Hermilio Herrero. Do you see
9 that?

10 A. I do.

11 Q. And your signature appears on those documents?

12 A. It does.

13 Q. Okay. And this was five days after the
14 indictment of Mr. Herrero on August 29th? Five or six?

15 A. Yes.

16 Q. Okay. So, you immediately filled out the
17 paperwork for Mr. Herrero after he was indicted, the
18 interstate agreement to have him transferred to Houston?

19 A. I didn't fill out this paperwork.

20 Q. I'm sorry. You signed it?

21 A. Kim Bryant was in charge of filling out the
22 paperwork. That's the initial KB after Bert Graham.
23 She was a lady at our office that completely was in
24 charge of all of the paperwork for all of the detainers
25 for all of the defendants for all the years I was there.

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1 Q. Okay. On Page 2 of this exhibit, you'll see
2 where you signed this detainer paperwork?

3 A. I did.

4 Q. Okay. Now, why did you not end up using
5 Mr. Foreman at Herrero's trial?

6 A. I didn't need him. I didn't believe him.

7 Q. Exhibit 71, that's a letter dated May 5th, 2002
8 from you to FCI medium, and you're asking the prison to
9 keep Jesse Moreno, Rafael Dominguez, Nathan Foreman and
10 Eddie Gomez safe from Herrero because he's put a hit on
11 all them for testifying in his case, right?

12 A. What's your question?

13 Q. Is that -- that's what it reflects, right?

14 A. Not exactly.

15 Q. Okay. Well, will you agree that the letter
16 says what it -- says what it says?

17 A. The letter is a request to try and keep them
18 safe.

19 Q. Right. And you refer to four witnesses, one of
20 whom is Herrero, right?

21 A. Yes.

22 Q. I mean -- I'm sorry. One of whom is Foreman,
23 right?

24 A. Yes.

25 Q. Okay. But you just said that he lied and you

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1 didn't believe -- you didn't believe him?

2 A. He didn't testify.

3 Q. That's not my question. You just said that he
4 lied and you didn't believe him, right?

5 A. I just said that Nathan Foreman did not testify
6 in the Hermilio Herrero trial.

7 Q. And you also found him to be a liar, right?

8 A. I did not believe him to be credible, no.

9 Q. And nevertheless, you gave him favors for his
10 assistance in the Herrero case, didn't you?

11 A. I did not. I wrote him a letter.

12 Q. Well, you also asked for the prison to keep him
13 safe based on his testimony in that case when he didn't
14 testify, right?

15 A. I think I still have an obligation to keep a
16 man from being killed, don't you? Even if I think he's
17 a liar, I can't let him get killed.

18 Q. Let's look at Exhibit 72. Exhibit 72 is a May
19 1st, 2002 letter from you to U.S. Attorney Todd Clemons.
20 We -- we mentioned his name earlier. And it says,
21 quote, "Moreno told me initially of the possibility of
22 other witnesses to admissions made by Herrero about his
23 committing this murder in 1995." And those other
24 witnesses we saw in that --

25 A. Okay. You just read -- which paragraph is

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1 that?

2 Q. Let me see.

3 A. Oh, I see it.

4 Q. You see it?

5 A. Yes.

6 Q. Because I don't.

7 A. Yes.

8 Q. Where is it?

9 A. Bottom of the first page.

10 Q. Okay. Here we go. Okay. "Moreno told me
11 initially of the possibility of other witnesses to
12 admissions made by Herrero about his committing this
13 murder in 1995. Moreno and the other three witnesses
14 have all been cooperative. It was, however, Moreno who
15 I presented to the jury as being the crux of the case,
16 and it was almost entirely because of his testimony that
17 the jury found Herrero guilty of murder," right? Right?

18 A. Yes.

19 Q. Okay. Now, the other three witnesses that you
20 were referring to there were Foremen, Ralph Dominguez
21 and Eddie Gomez, right?

22 A. I think so. I don't remember the last one.

23 Q. Okay. And by the time that you wrote this
24 letter, you had determined that foreman was not with
25 Moreno at the time Moreno claims he heard this testimony

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1 from Mr. -- or this confession from Mr. Herrero, right?

2 A. I don't remember when I figured that out.

3 Q. Okay. At some point before Mr. Herrero's
4 trial, you figured that out, right?

5 A. At some point before Mr. Herrero's trial, I did
6 not believe that Nathan Foreman was being completely
7 truthful.

8 Q. But regardless, you wrote this letter to the
9 U.S. attorney for Mr. Moreno, saying that all three
10 witnesses, including Foreman, had been cooperative?

11 A. That's correct.

12 Q. And Exhibit 73, even though by the time
13 Mr. Herrero's trial you had found out that Moreno had
14 been lying to you about Foreman being present, and you
15 Mr. Foreman had also lied to you on August 8th, 2001,
16 you, nevertheless, wrote a letter to Foreman's U.S.
17 attorney asking for a sentence reduction for his
18 assistance in the Herrero case; is that correct?

19 MS. MIRANDA: Do you have another copy of
20 those last two letters?

21 A. Okay. What was your question?

22 Q. (BY MS. SCARDINO) By May 1st, 2002, Herrero's
23 trial was over, right?

24 A. Yes.

25 Q. Prior to his trial, you had determined that --

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1 not only that -- well, first, I'll break it down.

2 You had determined that Moreno's initial
3 story to you about hearing the confession of Herrero in
4 the presence of Nathan Foreman was false, correct?

5 A. I don't remember that -- making that
6 determination, no.

7 Q. I thought you just were saying that at some
8 point prior to trial, you determined that Mr. Foreman
9 was not present during that confession?

10 A. No. I determined that Mr. Foreman was not
11 being completely credible -- truthful.

12 Q. Did you not -- did you ever determine that
13 Mr. Foreman was not present for the -- for Herrero's
14 supposed confession to Moreno as Moreno had told you he
15 was back in July of 2001?

16 A. I don't remember. I didn't going into a break
17 it down determination of all the reasons why I thought
18 Nathan Norman was lying. I just didn't believe him, so,
19 I didn't use him.

20 Q. Okay. But you, nevertheless, wrote this letter
21 to his U.S. attorney asking for a sentence reduction,
22 right?

23 A. Not exactly. That's a lot different letter
24 than the one I wrote for Jesse Moreno.

25 Q. Are you disagreeing that this Exhibit 73 is a

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1 letter to Nathan Foreman's U.S. attorney asking her to
2 consider his cooperation in the Herrero case?

3 A. I agree that I wrote this letter saying that
4 Nathan Foreman was cooperative. I don't say nearly the
5 parts about how truthful he was like I do with Jesse
6 Moreno, and I do not specifically make a request for a
7 downward departure like I do for Jesse Moreno. It's a
8 different letter.

9 Q. Okay. And nowhere in this letter do you say,
10 "Ms. Batson, I met with -- with Mr. Foreman. I think
11 he's a complete liar"?

12 A. I do not say that.

13 Q. You do not say that?

14 A. No.

15 Q. And nothing was requiring you to write this
16 letter, right? You didn't have to right this letter to
17 Ms. Batson, right?

18 A. I did not.

19 Q. You chose to do that on Mr. Foreman's behalf?

20 A. I chose to write the letter.

21 Q. Now, Hermilio Herrero was convicted of murder
22 in April, 2002, and he was sentenced to life in prison,
23 right?

24 A. Yes.

25 Q. And Moreno and Dominguez testified him --

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1 against him at that trial, correct?

2 A. Yes.

3 Q. Okay. And immediately after Herrero was
4 convicted, you started working -- discussing with
5 Moreno's U.S. attorney about getting his sentence
6 reduced, right?

7 A. That's not how I would put it.

8 Q. Okay. How would you put it?

9 A. When I finish a trial -- when I finish a trial,
10 I want to complete all of my to-dos and all of my
11 paperwork to be done with the whole case to give the box
12 to appellate.

13 I write the jury their thank you notes. I
14 call all my witnesses to tell them what happened. I
15 call all the cops to tell them what happened. And in
16 this case, I needed to write the fed prosecutor letters,
17 and I did that so I could be done with the case.

18 Q. Okay. I'm going to show you Exhibit 125. Now,
19 Exhibit 125 is an undated letter from Jesse Moreno to
20 you telling you exactly what to say to U.S. Attorney
21 Clemons to get him transferred to another prison and to
22 have his sentence reduced, right?

23 A. I don't know what this is.

24 Q. Okay. Have you never seen it before? It was
25 found in your file.

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1 A. I'm trying to recognize it. I don't remember
2 seeing this.

3 Q. You've never seen that?

4 A. I'm not denying that it was in the file that
5 you got from Brian Rose but I don't remember seeing
6 this.

7 Q. Were you, in fact, able to persuade the unit
8 team to transfer Moreno to the prison to keep him safe
9 like we discussed earlier?

10 A. I don't know -- when are we talking about?

11 Q. Well, did you -- did you contact BOP in
12 Beaumont and inform them that Moreno and these other
13 witnesses -- these other three witnesses had
14 testified -- or had cooperated in your case against
15 Herrero and he needed to keep him safe?

16 A. I don't know what this says. I didn't read the
17 whole thing. Is that what this is?

18 Q. No, I'm asking you after you got -- after you
19 received this --

20 A. Are we done with this? I don't know if I
21 received this. I do not recognize this.

22 Q. Okay. Were you able to persuade the unit team
23 in BOP, the FCI Beaumont team to move Moreno and these
24 other three witnesses to another area of the prison
25 where they would be kept safe?

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1 A. I don't remember. I hope so.

2 Q. Okay. So, that's something that you might have
3 been able to do is all I'm -- is all I'm asking?

4 A. All I can do is make the request.

5 Q. Okay.

6 A. The federal prisons do what the federal prisons
7 do.

8 Q. Okay. Now, Exhibit 123 -- Exhibit -- Exhibit
9 123 was also produced from your file by the DA's office,
10 and it is a witness voucher for your testimony in an
11 August 22nd, 2002 sentence reduction hearing for Jesse
12 Moreno. Do you recognize this document?

13 A. I do.

14 Q. Okay. You filled it out, correct?

15 A. I didn't fill this out.

16 Q. You didn't fill it out?

17 A. No.

18 Q. Okay. Well, you -- you must have told someone
19 how to fill it out so you could sign it and get
20 reimbursed?

21 A. I don't know how it got filled out. It says
22 signed by the assistant U.S. attorney.

23 Q. Okay. But you recall seeing this document, you
24 recall making this -- submitting this fact witness
25 voucher?

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1 A. I remember seeing this.

2 Q. Okay. Now, this was never produced to
3 Mr. Prible's defense team, was it?

4 MS. MIRANDA: Okay. I'm going to object at
5 this point, and I know we're going to continue --

6 MS. SCARDINO: Well, hold on. Let me
7 finish --

8 MS. MIRANDA: Okay.

9 MS. SCARDINO: -- my sentence.

10 MS. MIRANDA: Okay.

11 Q. (BY MS. SCARDINO) This was never produced to
12 Mr. Prible's defense team, was it?

13 MR. DOYLE: Objection.

14 A. Why would it be?

15 Q. (BY MS. SCARDINO) I'm just asking you if it
16 was ever produced to Mr. Prible's defense team?

17 A. This piece of paper having to do with Jesse
18 Moreno, you're asking me why I didn't produce this to
19 Jeffrey Prible's defense team?

20 Q. I'm asking if you did produce it to their
21 defense team?

22 A. No.

23 Q. Okay. Now, the hearing for Mr. Moreno that
24 this references was in Lafayette, Louisiana, right?

25 A. I was instructed that that hearing was

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1 confidential and that I was never to talk about it or of
2 it to anyone, by a federal judge.

3 Q. Okay.

4 MS. SCARDINO: Objection, nonresponsive.

5 MR. DOYLE: Wait a second. If -- if it's
6 something that's under -- under the Court -- federal
7 judge's order, what are we going to do?

8 MS. SCARDINO: Yes. Actually, I can take
9 care of that. We have a protective order in this case.
10 We were able to get that file from the Court in
11 Lafayette. We have a protective order. It's under
12 seal. It's not to be used outside of this.

13 MR. DOYLE: So, you have the information on
14 that?

15 MS. SCARDINO: I do. I do.

16 MR. DOYLE: Okay.

17 MS. SCARDINO: Yeah.

18 MR. DOYLE: And so, would this portion of
19 this record be sealed?

20 MS. SCARDINO: Yes.

21 MR. DOYLE: Okay.

22 MS. SCARDINO: I'm going to ask that it be
23 sealed, and I'm going to ask that the document itself,
24 the --

25 MR. DOYLE: That's fine.

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1 MS. SCARDINO: -- hearing transcript be
2 sealed. Now, this was in her file. This is not under
3 the protective order.

4 MR. DOYLE: Okay.

5 MS. SCARDINO: 123. Okay? And when we go
6 on break for lunch, I'll show you that protective order.

7 MR. DOYLE: Okay.

8 MS. MIRANDA: Can we take just a really
9 super quick break? I just need to consult with them
10 really quickly about something? Are we almost --

11 MS. SCARDINO: Okay.

12 MS. MIRANDA: -- done with this line of
13 questions?

14 MS. SCARDINO: Yeah, we're almost done with
15 this line of -- I mean --

16 MR. DOYLE: Well, she needs to get an
17 answer to this, though, right? That's what your caucus
18 is about?

19 MS. MIRANDA: Well, I'm a little concerned
20 about --

21 MS. SCARDINO: Oh, about the protective
22 order?

23 MS. MIRANDA: -- about the line of
24 questioning, and so --

25 MS. SCARDINO: Well, we can -- okay. Well,

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1 why don't you make your --

2 MR. RYTTING: Make your objection.

3 MS. SCARDINO: -- question to me on --

4 yeah, go ahead and make it on the record.

5 MR. RYTTING: Just object.

6 MS. MIRANDA: I'll just make my objection
7 on the record.

8 MS. SCARDINO: Yeah. Yeah.

9 MS. MIRANDA: And then we'll just keeping
10 going. All right. But I'm going to object at this
11 point with the depth and detail into which we are going
12 into the Herrero case because the Herrero case is only
13 relevant to this proceeding to the extent that it
14 informed her knowledge of the informants in the -- in
15 the penitentiary.

16 And so, I'm going to object that we might
17 be using this deposition as discovery in another case
18 for a defendant that he's representing.

19 MS. SCARDINO: Okay. Tina, that's an
20 improper objection under the Rules and it's coaching of
21 the witness, and you know as well I do that there is no
22 restriction on this deposition --

23 MR. DOYLE: You just --

24 MS. SCARDINO: -- to the matters between
25 Prible versus matters regarding Herrero.

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1 MS. MIRANDA: Okay. We are in a litigation
2 about a client. The fact that you can depose this
3 person with respect to Mr. Prible does not -- that --
4 there are restrictions. There's restrictions to the
5 scope of this case. You can't depose her for discovery
6 for every other case that he represents her in.

7 And I understand that the judge was upset
8 about us coming to him but I -- that is something that I
9 will go back to the judge on. You -- you don't get
10 permission to depose a witness in a case about a thing
11 and then you get to go into all that.

12 Now, I understand -- I'm saying that I
13 understand there's some leeway with the Herrero case but
14 I'm objecting because it appears that we're going into
15 discovery matters for that case and not this case.

16 MR. RYTTING: Look --

17 MS. SCARDINO: Okay. Let's go ahead and go
18 off the record and we're going to have call the judge
19 again because this is related to Mr. Prible's matter --
20 case.

21 MS. MIRANDA: Okay.

22 MS. SCARDINO: The Herrero and Prible cases
23 are interrelated. This is what our motion for the
24 depositions and motion for discovery was about, which
25 was granted by the Court.

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1 MS. MIRANDA: Okay. And if you -- before
2 we do that, if you could just give me a few minutes to
3 consult with them, then maybe we can come to -- I can
4 figure that out.

5 MS. SCARDINO: That's fine.

6 MS. MIRANDA: Okay.

7 THE VIDEOGRAPHER: The time is 12:25.
8 We're off the record.

9 (Lunch recess.)

10 THE VIDEOGRAPHER: This is the beginning of
11 file 5. The time is 1:20. We are on the record.

12 Q. (BY MS. SCARDINO) Okay. Ms. Siegler, earlier
13 we were talking about the open file policy that you said
14 the DA's office had during this time period that
15 Mr. Prible was prosecuted, and in that -- when a defense
16 attorney came in to view the file, would they be able to
17 take notes of what they were reading?

18 A. Yes.

19 Q. But they would not be able to make copies of
20 the documents in the file; is that right?

21 A. Correct.

22 Q. And you testified that you had no work product
23 file that you kept as such, correct?

24 A. Not per se, not necessarily, no.

25 Q. Okay. And that is because all of your work

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1 product would have been reviewable by the defense,
2 right?

3 A. I'm trying to think of what work product might
4 have come up in Prible early on. I can't think of what
5 it would have been.

6 Q. Okay.

7 A. But my notes I wouldn't have considered work
8 product.

9 Q. Okay. All notes -- any notes that you took
10 working on this case would have been available to
11 defense attorneys to see; is that right?

12 A. Yes.

13 Q. Okay. And how do you define work product?
14 What's your understanding of that definition? The legal
15 definition of work product.

16 A. We tried to keep most things not work product
17 just because it was simpler.

18 Q. Okay. Do you -- do you know what the term
19 "work product" -- how it's defined under the law?

20 A. Tell me.

21 Q. No, I'm asking you if you -- if you know?

22 A. No, I don't know the criminal definition of it.

23 THE VIDEOGRAPHER: I'm sorry, Ms. Scardino,
24 can you put on the microphone.

25 MS. SCARDINO: I'm sorry.

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1 Q. (BY MS. SCARDINO) Okay. There were other
2 nontestifying informants that were involved in the
3 Prible case; isn't that right?

4 A. I remember Michael Beckcom but Michael Beckcom
5 testified.

6 Q. Okay. Do you remember discussing Mr. Prible's
7 case with other inmates other than Mr. Foreman and
8 Mr. Beckcom in FCI Beaumont?

9 A. I don't remember. I could have but I'm not
10 sure if I did there or where or who it would have been.

11 Q. Okay. I'm going to show you Exhibit 112. And
12 you see on the last page of this Exhibit 112 it says the
13 letter was received by you on May 22nd, 2002? Do you
14 see that?

15 A. Just a second.

16 Q. Okay.

17 A. Okay.

18 Q. Okay. And this letter to you is from Jesse
19 Gonzalez and Felix Gonzalez. Do you see that at the
20 top?

21 A. I do.

22 Q. Okay. Do you remember Mr. and Ms. -- or
23 Mr. Jesse Gonzalez and Felix Gonzalez?

24 A. I never met them.

25 Q. Okay. Do you recall that they were -- I'm just

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1 asking you if you -- if you remember them. Do you
2 remember them?

3 A. I never met them. I remember getting this
4 letter.

5 Q. Okay. Do you remember that they're a
6 father/son duo that's incarcerated together in FCI
7 Beaumont?

8 A. Only from this letter.

9 Q. Okay. But you did -- you remember receiving
10 this letter in May of 2002?

11 A. Yes.

12 Q. Okay. And in this letter, Mr. Gonzalez said
13 that he and his father have spoken to you twice on the
14 phone about the Prible case, right?

15 A. That's what he says.

16 Q. Okay. And he -- do you recall speaking to him
17 on the phone about the Prible case?

18 A. I do not.

19 Q. Do you -- do you just not remember or did you
20 not -- let me ask that question more clearly.

21 Did you ever speak on the telephone with
22 the Gonzalezes about Mr. Prible's case?

23 A. Not that I remember, no.

24 Q. Not that you recall, no?

25 A. (Witness indicated by shaking her head

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1 negatively.)

2 Q. Okay. And you notice in this letter that the
3 word "Prible" is misspelled, do you see that?

4 A. I do.

5 Q. With two Bs instead of one?

6 A. Correct.

7 Q. Okay. And Mr. Gonzalez, in this letter, also
8 mentions a newspaper article that he had recently seen
9 about the case while he was in prison, right?

10 A. He does.

11 Q. Okay. Now, was it your practice with
12 informants if someone reached out to you with
13 information about a case and you spoke with them on the
14 phone to ask them to write you a letter detailing what
15 they knew about the case?

16 A. No.

17 Q. That wasn't a practice that you had?

18 A. No.

19 Q. Did you ever ask any informant to put down what
20 they knew in writing and send it to you?

21 A. I did not.

22 Q. Did you ever tell potential informants to take
23 a prison photograph with the defendant that they were
24 working to testify against?

25 A. I saw that in your petition where you said I

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1 did that. That is a lie.

2 Q. I'm just asking you. So, you deny that you
3 ever did that?

4 A. I did not.

5 Q. Okay. But you are aware of such informant
6 photos, correct?

7 A. I saw the picture.

8 Q. Okay. When was the first time you saw that
9 informant photo?

10 A. I don't know if I first saw it at Beaumont or
11 when -- when Beckcom got back to Harris County right
12 before the trial.

13 Q. But you saw the photos prior to the trial of
14 this case?

15 A. Yes.

16 Q. Okay. And they were shown to you by Beckcom?

17 A. I think it was Beckcom.

18 Q. Okay.

19 A. But I'm not sure about that either.

20 Q. Okay. Now, parts of this letter from
21 Mr. Gonzalez don't make sense, right?

22 A. They do not.

23 Q. Okay. And what was your take on this letter
24 when you received it?

25 A. Mr. Gonzalez was trying to glom on and put

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1 himself in the middle of a case to try and get himself a
2 deal, like every other inmate in federal prison.

3 Q. Okay. And did you believe his story from this
4 letter that he had heard Mr. Prible confess?

5 A. I did not believe his story for lots of
6 reasons.

7 Q. Also, if you notice in this photo -- in this
8 Exhibit 112, Mr. Gonzalez says that he knew about Jeff
9 and Jeff's case before Jeff even got to the medium from
10 the low. Did you see that?

11 A. I did see that.

12 Q. Okay. How might an inmate know that another
13 inmate is going to be transferred to their unit of the
14 prison?

15 MS. MIRANDA: Objection, form.

16 A. I have no idea. I didn't believe what this
17 letter had to say.

18 Q. (BY MS. SCARDINO) And is that why you decided
19 not to have Mr. Gonzalez testify against Prible in his
20 case, because you determined that he was not credible?

21 A. Correct.

22 Q. Okay. Did you ever show Mr. Gaiser or
23 Mr. Wentz this letter from Mr. Gonzalez?

24 A. It would have been in the file.

25 Q. Okay. So, your -- your testimony is yes, you

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1 did show it to them?

2 A. I don't know if they looked at it or not. It
3 would have been in the file.

4 Q. It would have been in the file that you gave
5 them to review when they came into your office to review
6 the file?

7 A. Correct.

8 Q. And do you have any written record of what was
9 in that file that you gave them to review?

10 A. No.

11 Q. Okay. You never made any notes about
12 specifics?

13 A. The file was an open file. I've known Terry
14 Gaiser for years. Any time he wanted to read the file,
15 he could come. I would even bring it to court for him
16 to read during docket call. "Here it is, Terry.
17 Knock -- knock yourself out."

18 Q. Now, Exhibit 113 -- Exhibit 113 is a letter
19 from Carl Walker, another inmate in FCI Beaumont, to you
20 about Mr. Prible's case. Do you recognize this letter?

21 A. I do, but this is the only letter I noticed you
22 all talk about in your petition where you don't have the
23 envelope attached with the date. I'd like to see the
24 date, please.

25 Q. Well, I'd like to see it also but it wasn't

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1 produced to us from your file.

2 A. That's odd.

3 Q. Do you think it should be in your file
4 somewhere?

5 A. You should ask him that.

6 Q. Well, I'm asking you because you know what's in
7 the file. Would you have kept that --

8 A. Yes.

9 Q. -- in your file?

10 A. Yes.

11 Q. Okay. So -- and it would be -- and in your
12 mind, we should be able to review the entire file,
13 right, that you had in this case?

14 A. No, I just want to know where the envelope is
15 because you've attached the rest of the envelopes.

16 Q. Right. I've attached everything that was
17 given -- I'll represent to you that was produced to us
18 by the DA's office.

19 So, you've seen this letter before. Do you
20 recognize it?

21 A. Okay.

22 Q. Okay. Now, why did you not use Carl Walker to
23 testify against Mr. Prible?

24 A. I didn't believe him.

25 Q. Okay. Did you ever speak with him on the

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1 phone?

2 A. I don't even remember the name of Carl Walker.
3 Unlike the other inmates whose names I do recognize, I
4 don't remember Carl Walker's name.

5 And I also notice in this letter that he
6 talks as if Prible had already been indicted, unlike the
7 others, which, again, makes me wonder where is the
8 envelope that went with this letter.

9 MS. SCARDINO: Objection, nonresponsive.

10 Q. (BY MS. SCARDINO) And I would very much like
11 to see that envelope also, I would represent to you.
12 So --

13 Okay. So, you chose -- you decided not to
14 use Mr. Walker because you thought he was not credible?

15 A. Based on what he's saying here --

16 Q. What he's saying here?

17 A. -- it doesn't make sense.

18 Q. Okay. But you're saying that you showed this
19 letter to Mr. Prible's defense team?

20 A. I'm saying it was in the file.

21 Q. So, you can't say for certain that you showed
22 this letter to Mr. Prible's defense team?

23 A. I don't know what they read. The file was open
24 for them to read whatever they wanted.

25 Q. Let's look at Exhibit 114.

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1 MR. DOYLE: Thank you.

2 Q. (BY MS. SCARDINO) Exhibit 114 is a letter from
3 Mark Martinez, another inmate at FCI Beaumont, to you.
4 And if you look on the third page, there's an envelope
5 that's dated April 30th, 2002. Do you see that?

6 A. Just one second.

7 Q. Okay.

8 A. Okay.

9 Q. Okay. Now, why didn't you use Mr. Martinez in
10 your case against Mr. Prible?

11 A. Because it's pretty obvious that he's just
12 trying to jump on the bandwagon of what all they're all
13 saying to each other out there. He's trying to say
14 whatever he can to act like he knows something he
15 doesn't know for a time cut, like every other inmate in
16 federal prison. I didn't believe him either.

17 Q. And -- and when you say talking about things --

18 MS. SCARDINO: I'm sorry, if you could read
19 back her statement on that just so I get right.

20 MR. DOYLE: Something about time cut.

21 MS. SCARDINO: Something about all the --
22 all the other inmates that were talking about the case.

23 A. That's what he said.

24 Q. (BY MS. SCARDINO) Right.

25 A. They were all talking about it.

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1 Q. Okay. Okay. So, he said that all -- and you
2 got this -- you received this letter from him about four
3 months before Mr. Prible's trial -- six months -- about
4 six months before Mr. Prible's trial?

5 A. Yes.

6 Q. Okay. So, it looks like you had several
7 inmates in FCI Beaumont auditioning for this role of
8 informant against Mr. Prible, right?

9 A. Federal inmates audition for any role they have
10 on any case they can think of with any information they
11 might hear to try and get a time cut. That's what
12 federal inmates do all day long 24 hours a day every day
13 of the year.

14 Q. Yeah. So, you knew that they were doing this
15 before Mr. Prible's trial, right?

16 A. I'm not stupid.

17 Q. Okay. But your testimony is that you gave each
18 of these informant letters to Mr. Defense -- or
19 Mr. Prible's defense counsel prior to his trial, right?

20 A. My testimony is these letters were in the file.

21 Q. Okay. So, you can't say for sure whether you
22 gave these to Mr. Gaiser and Mr. Wentz?

23 A. I don't know what he read. I didn't babysit
24 his note taking and what he pulled out of the file to
25 read.

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1 Q. Now, if you look at these letters, if you line
2 them up side by side, do they look to you like they
3 might have been typed up by the same person?

4 A. They --

5 MS. MIRANDA: Objection, form.

6 A. They have similarities.

7 Q. (BY MS. SCARDINO) I'm going to show you
8 Exhibit 127. And, again, we don't have the envelope for
9 this letter that would show the date that it was mailed
10 to you but it's from Michael Beckcom, another inmate at
11 FCI Beaumont who eventually testified against
12 Mr. Prible, correct?

13 A. Okay. What was your question?

14 Q. You remember receiving this letter?

15 A. Not this one.

16 Q. Okay. Well, I'll represent to you that it was
17 produced by the DA's office from your file.

18 Okay. Now, does this letter have
19 similarities to the other inmate letters? The
20 similarities you just mentioned, aren't they --

21 A. The language in the body are nothing alike. I
22 would think that they all had to use the same typewriter
23 in whatever office they were allowed to use for their
24 allotted time of day. So, the typewriter is probably
25 going to be the same.

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1 Q. Okay. And the formatting of all of these is
2 the same, the indentions, the spacing, et cetera?

3 A. That is the same.

4 Q. Okay. Now let me show you Exhibit 180. This
5 is a letter typed up by Michael Beckcom found in his
6 Port Aransas -- or his Aransas County capital murder
7 case, from that file. Do you see the same similarities
8 in this -- the formatting of this letter as in these
9 other informant letters?

10 A. I see that they look like they could be the
11 same typewriter.

12 Q. Okay. Did it ever occur to you that these
13 Exhibits 112 through 114, those informant letters could
14 have been typed up by the same person?

15 A. They might have been. I don't know. I think
16 the similarity is the typewriter.

17 Q. Did it raise a red flag to you when you
18 received these letters that they all looked the same?

19 A. Yes.

20 Q. And did -- and that red flag to you was that
21 they could have been typed up by the same person?

22 A. I don't know if I thought that.

23 Q. Okay. What was the red flag that you were
24 referring to?

25 A. Well, the main red flag was between -- or in --

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1 in comparing the two letters written by -- the Jesse and
2 Felix Gonzalez letter compared to the Carl Walker
3 letter. To me, those are the ones that raise -- and
4 Mark Martinez, those raise the red flags.

5 Q. Okay. And it was obvious that these guys were
6 talking about this case on the yard together?

7 A. Jesse Gonzalez, Felix Gonzalez, Carl Walker and
8 Mark Martinez, yes.

9 Q. Okay. But it wasn't obvious to you that they
10 were speaking about this case with Mr. Beckcom even
11 though he had --

12 A. Not based on this letter. It has nothing to do
13 with Prible.

14 Q. And not -- and not looking at the substance of
15 the letter --

16 A. But that's what we're talking about.

17 Q. -- the for -- excuse me -- the formatting of
18 the letter, did it appear to you that they were all
19 typed up by the same person?

20 A. No.

21 Q. Okay. In looking at it still, you disagree
22 that Mr. Beckcom had typed up all of those letters?

23 A. I would have no way of knowing that.

24 Q. Okay. And it didn't even cross your mind at
25 the time that he could have been typing up those

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1 letters?

2 A. No, ma'am.

3 MS. SCARDINO: I'm going to backtrack just
4 a minute to -- James, to put on the record that
5 agreement that we --

6 MR. DOYLE: Okay.

7 MS. SCARDINO: -- made earlier because I
8 forgot to do that when we started.

9 (WHEREUPON, SEALED PROCEEDINGS HAVE BEEN
10 REMOVED AND BOUND SEPARATELY.)

11 Q. (BY MS. SCARDINO) I'll show you Exhibit 176.
12 It's an affidavit you filed in the state habeas hearing,
13 Hermilio Herrero's habeas proceeding. I'm sorry. And
14 you signed that affidavit on March 22nd, 2016; is that
15 correct?

16 A. Okay.

17 Q. Okay. Nowhere in that affidavit do you say
18 that you traveled to Louisiana and testified in
19 Mr. Moreno's Rule 35 hearing, does it?

20 A. Why would it?

21 Q. I'm just asking you if it does. Does that
22 appear anywhere in there?

23 A. It does not.

24 Q. Now, moving on, there was a criminal history
25 report for Nathan Foreman that we talked about earlier.

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1 Does the defense -- they don't have equal access to
2 those reports, correct?

3 A. They do.

4 Q. They do?

5 A. Yes.

6 Q. How does a defense attorney go about running a
7 criminal history report?

8 A. He opens the DA's file and looks at the
9 criminal history.

10 Q. Okay. I understand that. Is there any way
11 that the defense attorney would be able to see that
12 criminal history report if he wasn't looking at it in a
13 file at the DA's office?

14 A. Hire a private investigator and they get the
15 criminal history for them.

16 Q. Okay. What was your policy regarding giving
17 criminal history printouts that you had printed for
18 witnesses and for alternate suspects, what was your
19 policy about giving those over to the defense?

20 A. We gave them over to the defense.

21 Q. You gave all of the ones that you had run for
22 all witnesses, you gave them to the defense?

23 A. What do you mean "all"? We're talking about
24 which case?

25 Q. In -- in Mr. Prible's case.

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1 A. Can you rephrase the question?

2 Q. Sure. Let's see. You -- let's see. I can
3 show you each of these, if you'd like, if you feel like
4 you need to see them, or I can just tell you the names.

5 A. I gave the defense the criminal histories of
6 every witness that testified in the Prible case.

7 Q. Okay. If a witness did not testify, you didn't
8 give them that criminal history, right?

9 A. Who are we calling a witness? I don't call
10 Nathan Foreman a witness.

11 Q. You don't call him a witness?

12 A. Not in the Prible case.

13 Q. Okay. Was he a witness for you in the Herrero
14 case?

15 A. He tried to be.

16 Q. Okay. Now, he had knowledge about Prible's
17 case, right?

18 A. He was lying.

19 Q. Okay. But he was connected to Prible's case
20 because he came to speak with you about it, correct?

21 A. He's still lying.

22 Q. Okay. So, you did not -- okay. So, you didn't
23 give a criminal history report for Nathan Foreman to the
24 defense to Prible's case?

25 A. He wasn't a witness.

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1 Q. Okay. Did you give Exhibit 87 -- this is a
2 criminal history report for a Beaumont -- FCI Beaumont
3 inmate named Jonathan Jefferson that was found in your
4 file. Mr. Jefferson did not testify in Mr. Prible's
5 case. Did you give this Exhibit 87 to defense counsel?

6 A. I don't know who Jonathan Jefferson is, and I
7 don't know what Terry Gaiser chose to take notes from in
8 the file.

9 Q. Okay. But you just said that you only gave the
10 criminal history reports for testifying witnesses,
11 right?

12 A. I said that I know for sure I gave them
13 criminal history reports for testifying witnesses.
14 There could have been other ones in the file that Terry
15 might have looked at. I don't know what he took notes
16 from.

17 Q. You don't have -- you don't have any
18 independent recollection of giving him this criminal
19 history report of Jonathan Jefferson, do you?

20 A. I do not.

21 Q. Exhibit 86 is a criminal history report for a
22 man named James Martin. Again, he did not testify in
23 Mr. Prible's case, so, you would not have given this
24 exhibit to Mr. Prible's defense counsel, correct?

25 A. I don't know who James Martin is.

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1 Q. Was he an alternate suspect in this case?

2 A. I have no idea who he is.

3 Q. I'm going to show you Exhibit 106. It's part
4 of that criminal history report with Mr. Martin with
5 some notes down at the bottom.

6 MS. MIRANDA: I don't have a copy of that
7 one.

8 MS. SCARDINO: I'm sorry.

9 MS. MIRANDA: Thanks.

10 Q. (BY MS. SCARDINO) Is that your handwriting?

11 A. It is.

12 Q. Okay.

13 A. This is Johnny Bonds' handwriting. The bottom
14 is my handwriting.

15 Q. Yes, the bottom is your handwriting. Okay.
16 And if you could read that handwriting into the record,
17 your handwriting.

18 A. "Nothing has ever happened between this witness
19 and defendant per Martin 9-10-02."

20 Q. And the next --

21 A. "Knew" --

22 Q. Sorry.

23 A. "Knew nothing regarding complainant and
24 defendant's activities and no recall day of money in the
25 bag."

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1 Q. So, from these notes, it looks like you reached
2 out to this James -- James Martin to follow up on a
3 statement that someone had given you in this case?

4 A. I wouldn't say reached out. I would say I
5 talked to him, whether it was on the phone or in person.
6 These are my notes talking about that conversation.

7 Q. Okay. I'm going to show you Exhibit 43. This
8 is a statement of Jamie Diane Lyons given on April 29th,
9 1999. And if you go to the second page, the first
10 paragraph, it says, "I don't know of any enemies that
11 Steve might have. The only friends of his that I met
12 were James Martin, lives in Woodgate subdivision on
13 Lemonwood, and a white guy who I've since learned to be
14 Jeff Prible. About seven months ago, Steve, Crystal and
15 I were at James' house on Lemonwood when Jeff came over
16 with a baby shower bag full of money. The whole bag was
17 full of cash." Do you see that?

18 A. I do.

19 Q. Okay. Did you contact Mr. Martin in order to
20 check out whether Jamie Lyons' story was correct?

21 A. I don't remember but that would make sense.

22 Q. Okay. And he -- and from looking at your
23 notes, it looked like he gave you a different story than
24 Ms. Lyons gave in her statement; is that right?

25 A. It looks like he told me he didn't remember

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1 anything about this baby bag full of money.

2 Q. That's right. And these notes of yours were
3 never presented -- or disclosed to Mr. Prible's attorney
4 before his trial, were they?

5 A. About Jamie Lyons and the baby bag full of
6 money?

7 Q. No. Your notes on Exhibit 106 about your
8 conversation with this witness, James Martin.

9 A. I don't know if they were or not. This
10 statement was in the file of Jamie Lyons. The name of
11 James Martin was in her statement for Terry Gaiser to
12 follow through with himself. I don't know if Terry
13 Gaiser took notes from this or not, No. 106.

14 Q. Do you think it was sufficient to give the
15 defense attorneys the name of a witness to disclose --
16 or to -- let me -- let me restate that.

17 In order to fulfill your Brady obligations
18 as a prosecutor, do you believe it was sufficient to
19 simply give the name of a witness to defense counsel
20 without giving the context of what that particular
21 witness had spoken to you about?

22 A. That's not what I said.

23 Q. I'm asking you --

24 A. I do not.

25 Q. -- if that's your belief? You do not?

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1 A. Not if I have exculpatory information, no.

2 Q. Okay. You're required to give --

3 A. The exculpatory information.

4 Q. -- the substance of that exculpatory
5 information? Okay. But I believe you said that you
6 gave the name of James Martin to Terry Gaiser and it was
7 up to him to follow through on this?

8 A. I didn't say that.

9 Q. That's not your -- your testimony?

10 A. No. That's not what I said. I said this
11 statement was in the file. The name of James Martin was
12 in the statement, and these notes specifically were also
13 in the file. Whether Terry Gaiser read it or not, I
14 don't know. I don't know what Terry Gaiser read.

15 Q. Exhibit 154, if we can find that.

16 MR. DOYLE: What does it look like?

17 MS. SCARDINO: That's the --

18 THE WITNESS: Office manual.

19 MS. SCARDINO: -- office manual. Here's a
20 copy if you need one.

21 MR. DOYLE: Thank you. I've got it,
22 thanks.

23 Q. (BY MS. SCARDINO) And the office manual had --

24 MR. DOYLE: I'm going to give it back to
25 you, Gretchen.

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1 MS. SCARDINO: Okay.

2 Q. (BY MS. SCARDINO) The office manual had
3 guidelines regarding the use of informants, correct?

4 A. I don't remember what all it had. It was -- it
5 was this thick.

6 Q. Right. It was very thorough --

7 A. Yes.

8 Q. -- would you say?

9 A. Yes.

10 Q. And the reason it would have had guidelines
11 about the use of informants is because as -- as we've
12 just discussed, prison inmates are notoriously
13 unreliable, right?

14 A. They lie.

15 Q. They lie. Everyone in jail wants a time cut?

16 A. Yes.

17 Q. Everyone wants out?

18 A. Yes.

19 Q. And so, the office needed to have guidelines
20 regarding the vetting and the usage of informants and
21 the benefits that were exchanged with informants for the
22 purpose of transparency, right?

23 A. I didn't write the guideline. I don't know
24 what their thinking was. This -- the -- the Harris
25 County DA's office guidelines were written way before I

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1 got there.

2 Q. Okay. But you were familiar with these
3 guidelines as a prosecutor, right?

4 A. Yes.

5 Q. Okay. So, if you look at Page 15 of this
6 exhibit, it contemplates two situations when informants
7 might be used, right? And one such circumstance was
8 where the defendant had a case pending and he and his
9 attorney decided -- or sought to have him become an
10 informant to work off the case. Do you see that?

11 A. I do.

12 Q. And if the trial bureau prosecutor had no
13 objections to that arrangement, it would be referred to
14 the Special Crimes Bureau for approval. The Special
15 Crimes prosecutor enters into a contract with the
16 defendant and his attorney and notifies the trial
17 prosecutor when the contract is completed or not
18 completed. Do you see that?

19 A. I do.

20 Q. Okay. And the second situation in -- in which
21 informants might be used was where the defendant had a
22 case pending, again, and a police officer who has used
23 the defendant as an informant in the past requests
24 special consideration in the form of a lenient sentence,
25 and in that case, the trial bureau prosecutor would make

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1 the determination of whether such consideration ought to
2 be given and then must follow and it lists a procedure.

3 Do you see that --

4 A. I do.

5 Q. -- that must be followed?

6 A. I do.

7 Q. Now -- so, the DA manual contemplates two
8 situations when informants might be used, right?

9 A. No.

10 Q. And --

11 A. These are two specific unique situations,
12 working off a contract and when a cop wants to work his
13 own informant, completely separate than what we've been
14 talking about all day.

15 Q. And -- and that -- that was my next question.
16 Neither of these situations applied to this case, right?

17 A. Correct.

18 Q. Okay. If the second situation would have
19 applied, the guidelines required several people to sign
20 off on the use of an informant, right?

21 A. It's a whole different situation.

22 Q. Okay.

23 A. It's not anything like using an informant as a
24 witness in another case.

25 Q. Okay.

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1 MS. SCARDINO: Objection, nonresponsive.

2 Q. (BY MS. SCARDINO) Let's look at the section --
3 Section 2. It said if that section would have applied,
4 "The requesting officer must produce his request in
5 writing with approval of a supervisor of the grade of
6 lieutenant or above attached thereto. The chief of
7 Special Crimes or one of the members of the organized
8 crime division must be notified to determine if the
9 informant has good, bad or no past history with regards
10 to information furnished. Both the chief prosecutor in
11 the trial court and the first ADA must approve such
12 special consideration in writing, which shall become
13 part of the file. Additionally, Special Crimes shall
14 log the special consideration information in a
15 well-bound book kept for such purposes. It is the trial
16 bureau prosecutor's responsibility to ensure that such
17 information is communicated to Special Crimes." Do you
18 see that?

19 A. I do.

20 Q. So, in these two -- in these two situations in
21 which the use of informants might be contemplated, no
22 fewer than, I believe, six people had to sign off -- or
23 five people had to sign off on the use of that
24 informant; is that right?

25 A. No. Do you want me to explain?

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1 Q. No. I'm asking you in -- in what I just read,
2 if the second situation would have applied, the
3 guidelines required several people to sign off on the
4 use of that informant, right?

5 A. It's the working off of contracts that's the
6 issue here, not the use of the informant. We didn't
7 want cops taking -- taking it upon themselves to work
8 off dope cases or to work their informants and a cop's
9 unilateral decision, a narc on the street making that
10 call without going through us. It's the working off of
11 the contract that's at issue here, not the use of the
12 informant necessarily.

13 Q. Okay. So, if you were dealing with an -- an
14 informant who was just trying to work off a drug case,
15 like a narc case, then this would have applied?

16 A. This is -- this is -- this is to put an
17 informant on the streets to work off a case the cop has
18 on him by trying to sell more dope by hooking him up
19 with the bigger guy up the chain. The goal was to get
20 the bigger guy up the chain.

21 And our reason for this rule was to stop
22 the cops from doing it out there willy-nilly without us
23 knowing what was going on and making those deals.

24 Q. Okay.

25 A. Nothing to do with simply testifying as a

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1 snitch in a case.

2 Q. Okay. And if -- and my question to you is if
3 you did have a narc case like you just described, no
4 less than five people would have had to sign off on
5 that, right, according to this?

6 A. There were -- there were a lot. I was the boss
7 of Special Crimes. There were a lot.

8 Q. Okay. And that was my next question. Were you
9 Special Crimes -- you -- at this point, you were in
10 Special Crimes. So, you would have had to have been one
11 of the people that signed off on the use of the
12 informant for that working off a contract type case?

13 A. The contract.

14 Q. Is that correct?

15 A. We didn't want -- we didn't want a cop working
16 off 20 kilos of cocaine by having some street guy going
17 and buying some marijuana and saying, "Oh, we're all
18 good. Special Crimes, let his case go." It's the
19 contract that was the problem. We wanted to know every
20 deal going on with drug cases with contracts. We wanted
21 to be aware of it.

22 Q. And the reason it was so important in that case
23 to have so many people sign off on the use of an
24 informant was so they could vet that informant's
25 credibility, right?

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1 A. It was really to watch the cops, to be honest
2 with you.

3 Q. Okay.

4 A. We didn't want cops deciding all by themselves
5 who they were going to work off. We wanted to decide.

6 Q. Okay. So, the reason it was important was
7 transparency, you didn't want the cop to be able to do
8 something that you all were unaware of, right?

9 A. We -- we didn't like the whole concept of
10 working off dope cases -- of working off dope cases that
11 way anyway but this was to watch the cops.

12 Q. Okay. Now, it refers -- the passage I read
13 earlier refers to a well-bound book. What is that book
14 and where can I find it?

15 A. It wasn't really a well-bound book. When I was
16 involved with this, it was like a folder passed down
17 forever with contracts in it. And the whole time I was
18 in Special Crimes, I don't know if I ever even saw a
19 contract. That's how rare they were because we didn't
20 like them.

21 Q. Why didn't you like them?

22 A. We didn't want the cops doing it. If you had a
23 dope case, you had a dope case. Take it to court. Take
24 it to trial. Don't work it off on the streets because
25 they never got the bigger guy.

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1 Q. So, now when you --

2 A. They would just get more dope. It didn't solve
3 any problems.

4 Q. So, when used an informant in another context
5 to testify in a case against you, you wouldn't enter
6 into a contract with that informant?

7 A. Like this?

8 Q. No, just -- I'm just asking would you enter
9 into a written contract with that informant?

10 A. Not under circumstances like the Herrero or
11 Prible case, no.

12 Q. What about other circumstances, would you ever
13 enter into a contract with an informant?

14 A. On immunity agreements, which were as rare as
15 contracts, it was written down.

16 Q. Okay. Nothing was stopping you from putting
17 the agreement that you had with an informant into the
18 form of a written contract, right?

19 A. It was pretty transparent because I told the
20 jury what the deal was.

21 MS. SCARDINO: Objection, nonresponsive.

22 Q. (BY MS. SCARDINO) There was no one at the DA's
23 office that said, "You can't put your deal with an
24 informant in writing," right?

25 A. We didn't need to. We told the jury.

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1 MS. SCARDINO: Objection, nonresponsive.

2 Q. (BY MS. SCARDINO) There was no one at the DA's
3 office that said, "You can't put a deal with an
4 informant in writing," was there?

5 A. There was no rule that said I couldn't do that.
6 There was also no defense lawyer who ever required me to
7 do that.

8 MS. SCARDINO: Objection, nonresponsive.

9 Q. (BY MS. SCARDINO) Okay. So, you -- at least
10 with these smaller cases, these smaller drug cases that
11 were contemplated in this section that I just read to
12 you, you were the person that would have had to approve
13 the use of those informants in writing, right?

14 A. Well, it depends on where I was in Special
15 Crimes at the time and where I was in the chain. The
16 whole time I was in Special Crimes, I wasn't the
17 ultimate signer off. It would have been my supervisor
18 or boss, wherever I was in that time.

19 And you said smaller drug cases, these were
20 the big drug cases. That's why they were rare.

21 Q. I'm sorry, I'm comparing them to a capital
22 murder case. You have a drug case versus a capital
23 murder case, right?

24 A. People get killed in those drug cases. That's
25 why we didn't like the street deals.

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1 Q. Okay. Okay. But in a -- in a drug case in
2 which a defendant was trying to, quote, work off the
3 contract, you required -- the DA's office required that
4 informant deal to be in writing, right?

5 A. Yes.

6 Q. But in the case of if you're using an already
7 convicted capital murderer in a federal prison to
8 testify against another one of your capital murder
9 defendants in a state case, there needed to be no
10 writing memorializing that at all?

11 A. It essentially was in writing.

12 MS. SCARDINO: Object --

13 A. The defense lawyer understood what was
14 happening who represented that inmate/witness. It was
15 told to the jury. It was told in opening statement. It
16 was told on direct examination. It was told on cross
17 examination. And it was told in final argument. It was
18 all out there.

19 MS. SCARDINO: Objection --

20 A. This was no secret.

21 MS. SCARDINO: Objection, nonresponsive.

22 Q. (BY MS. SCARDINO) Did you have a written
23 contract with Mr. Beckcom in Mr. Prible's case?

24 A. I did not.

25 Q. Did you have a written contract with

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1 Mr. Foreman in Mr. Prible's case?

2 A. One more time, Mr. Foreman was not involved in
3 Jeffrey Prible's case. I know you want him to be but he
4 was not.

5 MS. SCARDINO: Objection, nonresponsive.

6 Q. (BY MS. SCARDINO) Did you have a written
7 contract with Mr. Foreman for Mr. Prible's case?

8 MR. DOYLE: Objection, asked and answered.

9 A. Mr. Foreman was not involved in Mr. Prible's
10 case.

11 Q. (BY MS. SCARDINO) Did you enter into a written
12 contract with Mr. Moreno in the Herrero case?

13 A. No.

14 Q. Did you enter into a written contract with
15 Mr. Foreman in the Herrero case?

16 A. No.

17 Q. Did you enter into a written contract with
18 Mr. Dominguez in the Herrero case?

19 A. No.

20 Q. Did you enter into a written contract with
21 Mr. Eddie Gomez in the Herrero case?

22 A. He did not testify, and I don't remember him
23 for that reason, but the answer is there was no written
24 contract for any of them.

25 Q. Okay. And you say that these informant

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1 contracts were pretty rare, right? They didn't --

2 A. No, that's not what I said.

3 Q. Okay.

4 A. I said these contracts that you've talked about
5 on Page 14 and tried to make appear to be the same kinds
6 of testimony we've been discussing all day be relevant
7 are very rare. That's what I said.

8 Q. I'm going to show you Exhibit 162. Exhibit 162
9 is an informant agreement made between the Harris County
10 DA's office and Vincent Flores on July 23rd, 1996. Do
11 you see that?

12 A. I do.

13 Q. And this document was produced by the DA's
14 office in this case from your file. And this is an
15 example of a contract that would be entered into by the
16 DA's office with another -- with an informant, right?

17 A. I don't understand the relevance. Whatever
18 this is, 162 has nothing to do with Prible or Herrero.

19 Q. And I'm not asking you if it has anything to do
20 with --

21 A. Your question made it sound like -- you said it
22 was produced as part of this file, as if it had
23 something to do with Prible or Herrero, and that is not
24 true.

25 Q. Okay. Do you know that Mr. Flores was -- was a

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1 witness in Prible's case?

2 A. I don't remember him.

3 Q. Okay. This -- and I'm representing to you that
4 this agreement was found in your Prible file and was
5 produced to us by the DA's office. Do you deny that?

6 A. I don't remember him.

7 Q. Okay. You don't remember him?

8 A. I do not.

9 Q. Okay. Now, earlier when I was reading from
10 Exhibit 154-5 and those two informant -- the
11 contemplation of the use of an informant that we already
12 discussed did not apply in this case but in those two
13 situations, deviations from that policy could only be
14 made in writing by the DA for good cause shown by the
15 prosecutor urging such deviation, right?

16 A. If we're talking about Page 154-5 in the
17 context of working off dope deals, contracts through
18 Special Crimes, I don't know what the deviation might
19 have been. I never dealt with the deviation where that
20 would have arisen but if that's what the manual says,
21 that's what the manual says.

22 Q. Okay. Is it your testimony that nothing in the
23 policy manual addressed the situation when informants
24 would be used in the matter that -- in the manner that
25 you used them in the Prible case?

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1 A. I have no idea what's in that manual. Like I
2 said, it's this thick.

3 Q. Go back to Exhibit 154.

4 MR. DOYLE: You gave me an extra one.

5 MS. SCARDINO: Oh, I did.

6 MR. DOYLE: Yeah, a while ago.

7 MS. SCARDINO: Oh, yeah. I have it here.

8 Q. (BY MS. SCARDINO) If you go to Page 16, and it
9 addresses agreements with cooperating individuals. Are
10 you familiar with this paragraph of the manual?

11 A. Let me read it.

12 Q. Okay.

13 A. I haven't read the manual since about 1987.

14 Q. Okay. And I'll read it out loud --

15 A. Okay.

16 Q. -- along with you. So, Exhibit 154-16 says,
17 "Agreements with cooperating individuals," and it says,
18 "Approval of such requests" --

19 A. Where did you jump?

20 Q. I'm sorry. Oh, sorry. Six lines down.

21 A. Do you want to just read the whole thing?

22 Q. Sure. "It is the policy of the district
23 attorney's office that officers who wish to use persons
24 who are presently charged with an offense as informants
25 or cooperating individuals shall contact an assistant

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1 district attorney from the organized crime division, the
2 major offender division or one of the other Special
3 Crimes divisions with such request. Approval of such
4 request must be obtained from the Special Crimes bureau
5 chief or, in his absence, a Special Crimes division
6 chief. The assistant shall review the circumstances of
7 the case pending against the individual, his criminal
8 record and what benefit is to be gained from using the
9 individual and make a decision as to whether such
10 agreement will be made. The -- the assistant will
11 ensure that investigating officers from the pending case
12 are contacted to allow their input in this decision
13 making process. If the assistant agrees to offer some
14 consideration on the pending case in exchange for the
15 cooperating individual's assistance, this agreement will
16 be reduced to writing and signed by the assistant, the
17 requesting officer and his supervisor, the cooperating
18 individual and his attorney. Any such writing shall
19 contain the signature of the Special Crimes bureau chief
20 or a division chief of the bureau signifying his or her
21 approval of the agreement." Do you see that?

22 A. I heard what you just read, yes.

23 Q. Okay. And, again, you were the Special Crimes
24 bureau chief, correct?

25 A. Yes.

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1 Q. And you -- this is saying that in order for the
2 district attorney's office to cut a deal with an
3 informant, no less than six people had to sign off in
4 writing; isn't that correct?

5 A. That's not what it says.

6 Q. That's not what it says? You disagree that
7 that's what it says?

8 A. Read the first line again. "It is the policy
9 of the DA's office that officers" -- police officers --
10 "who wish to use people presently charged." This is the
11 same thing we were talking about earlier. This is to
12 watch over cops wanting to make deals.

13 Q. Okay.

14 A. It's not what we've been talking about on the
15 Herrero case or the Prible case.

16 Q. And I'm not asking about the Herrero case and
17 the Prible case. I'm talking about the -- the Harris
18 County DA's policy with respect to having informant
19 agreements in writing.

20 A. These are cops working off cases with their
21 informants, they need to be in writing.

22 Q. Okay. So, your understanding of the Harris
23 County district attorney's policies was that no one
24 needed to sign off on your use of informants in the
25 Prible case; is that correct?

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1 A. That's correct.

2 Q. Okay. You had the ultimate discretion whether
3 to use an informant in Mr. Prible's case, right?

4 A. I did.

5 Q. And no one else needed to know about your use
6 of that informant or your conversations leading up to
7 your use of that informant in the case?

8 A. Well, it wasn't a secret. You made it sound
9 like I was trying to keep a secret.

10 Q. Well, did you tell it -- did you tell -- did
11 you share with Mr. Wisner and Mr. Bonds your
12 communications with these various informants?

13 A. They knew what was going on. Vic didn't come
14 to the Beaumont meeting with Johnny Bonds and me. Vic
15 didn't go with me to talk to Michael Beckcom the day
16 before he testified because Beckcom was my witness. We
17 divided up the witnesses. He did his. I did mine.

18 Q. Looking at Page 154-16, talking about the use
19 of informants in this paragraph 10 -- or D, agreements
20 with cooperating individuals, and I understand you said
21 it's a different situation than in the Prible case but
22 in this case that they're referring to in this policy
23 manual, no person who is on parole or probation would be
24 used as an informant, correct, without the written
25 approval of the parole board through its representative,

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1 if on parole, right?

2 A. That's what it says, yes.

3 Q. Okay. But when you used informants in the
4 Prible and Herrero case, it didn't matter that they were
5 not only on parole but they -- not on parole but they
6 were actually in prison, convicted for crimes at that
7 time, right?

8 A. One more time, this was written for the
9 situations where a cop, a narc wanted to work an
10 informant on the streets and have him sell more dope or
11 try to catch another bad guy, therefore, the requirement
12 that that defendant who is on parole or probation at the
13 time have to have his patrol officer or probation
14 officer involved in the process of him working on the
15 streets selling more dope was important. That is not
16 what we're talking about in the Herrero case or the
17 Prible case.

18 Q. Right.

19 MR. DOYLE: It might help if -- if you --
20 if you let her read what she pointed out to you, the
21 first two -- two lines where it speaks of officers.

22 MS. SCARDINO: Okay. Well, let's keep --
23 let's keep our objections to -- to form.

24 MR. DOYLE: Okay. But you didn't -- you --
25 you -- okay.

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1 MS. SCARDINO: Well, I already read -- I
2 read that into the record but we'll move on to Exhibit
3 154 --

4 MR. DOYLE: Well, that was not read into
5 the record, the first two lines.

6 Q. (BY MS. SCARDINO) Okay. Which lines are you
7 referring to, Ms. Siegler?

8 A. "It is the policy of the DA's office that
9 officers who use -- who wish to use persons who are
10 presently charged with an offense," and it goes on,
11 because this specifically deals with cops who want to
12 work their informants for dope deals or higher-ups in
13 the chain on the street, especially when those
14 informants at that time on the streets might be on
15 parole and might be on probation.

16 Q. Okay.

17 A. That is not the same as a testifying inmate.

18 Q. And that's -- that's my next question. So, is
19 your testimony that it was the policy -- it was not the
20 policy of the DA's office that prosecutors who needed --
21 who wished to use people that were incarcerated as
22 informants needed to contact an assistant DA from the
23 organized crime division, the major offender division or
24 one of the Special Crimes divisions with such a request?

25 A. Are you reading from Page 154-16?

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1 Q. Yes, I am. And I -- I just -- what I'm --
2 and -- and maybe we can make this easier if you just
3 answer this question.

4 A. Okay.

5 Q. It looks like you go through a lot of hoops to
6 use an informant in a case where you're trying to work
7 off a charge?

8 A. It was to watch over the cops.

9 Q. Okay. And so, I think you'll agree that when
10 you -- it sounds like when you used an informant that
11 was already imprisoned in federal prison to testify
12 against -- against Mr. Prible in his capital murder
13 trial, that these requirements listed in the policy
14 manual flew out the window, they didn't apply to that
15 situation, correct?

16 A. Two different scenarios.

17 Q. Okay. So, the answer is yes, these guidelines
18 did not apply to the situation in Mr. Prible's case?

19 A. Correct.

20 Q. Okay. And, likewise, moving on down that Page
21 154-16, it says, "No agreement for consideration on a
22 pending case will be considered where the pending case
23 involved any use of a deadly weapon, involved any act of
24 violence to other persons, cooperating individual is a
25 habitual criminal, cooperating individual has been

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1 adjudged guilty on pending case, involves one person
2 working off a case for another, vicarious contract, or
3 the agency arresting the cooperating individual is not
4 the agency seeking the contract, unless the arresting
5 agency is aware of the contract and agrees to the terms
6 in writing prior to any agreement with the cooperating
7 individual."

8 So, is it your testimony that the passage I
9 just read would not have applied to any of the
10 informants that you used in the Prible or Herrero cases?

11 A. The passage that you just read applies to those
12 defendants in the free world who a cop is asking to work
13 off a dope case through a contract by selling more dope
14 on the streets, and the passage here applies because if
15 the pending case involved violence, weapons, serious
16 victims and all that, those were the cases we were going
17 to let a cop willy-nilly decide to work off a case
18 through. To us, it was more important that the pending
19 case matter than a copy deciding unilaterally to work
20 off my case because he thought he had a good snitch that
21 could get him more dope off the streets.

22 Q. Okay. So, let's go through these 1 through 6,
23 and I'm going to take each informant from the Prible and
24 Herrero cases and ask you a question.

25 First, Mr. Beckcom, Mr. Beckcom had already

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1 been adjudged guilty on his pending case, right, he was
2 in prison?

3 A. Well, it was -- it wasn't pending. It was
4 resolved.

5 Q. I'm sorry. His resolved -- his case was
6 resolved. He was in prison --

7 A. Yes.

8 Q. -- correct? He had been convicted of capital
9 murder, correct?

10 A. Yes.

11 Q. He -- his deadly weapon of choice in that case
12 was a metal toolbox that he had put his victim in and
13 then threaded a garden hose from the exhaust pipe of his
14 car and turned the car on, right?

15 A. Yes.

16 Q. Okay. So, it definitely involved an act of
17 violence to another person?

18 A. It did.

19 Q. And he was a habitual criminal, correct?

20 A. I don't remember.

21 Q. You don't recall that he had been --

22 A. I don't want to argue with that but I don't
23 remember.

24 Q. Okay. Okay. And then Foreman -- Nathan
25 Foreman, his crime was assault causing bodily injury, do

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1 you remember that?

2 A. Nathan Foreman never testified.

3 Q. That's not my question.

4 A. Well, which case are we talking about?

5 Q. I'm asking you if you recall that Nathan
6 Foreman was convicted of assault causing bodily injury?

7 A. I don't remember what his conviction was for
8 because I never used him.

9 Q. Okay. Do you remember that he was a violent
10 criminal?

11 A. I never used him.

12 Q. Well, you spoke with him --

13 A. I don't know what --

14 Q. -- on August 8th, 2001, right?

15 A. I'm sorry?

16 Q. You spoke with him on August 8th, 2001, right?

17 A. I did.

18 Q. And did you ever speak with him again after
19 that?

20 A. He probably tried to call me but I don't know
21 what we talked about for very long because I knew he was
22 a liar.

23 Q. Okay. But you never met with him in person
24 again?

25 A. After the Beaumont -- after the --

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1 Q. After the August the 8th, 2001.

2 A. -- downtown Houston day, no.

3 Q. Okay. Nathan Foreman was a habitual criminal,
4 do you remember that?

5 A. I don't remember.

6 Q. Okay. Well, my question to you is these six
7 requirements for an informant -- or for an agreement for
8 consideration to be given to an informant in the type of
9 case that we discussed earlier, the drug case on the
10 street, if you had a different situation like the Prible
11 case, it didn't matter if the informant was involved in
12 a crime that had -- or committed a crime that involved
13 the use of a deadly weapon, right, you could still use
14 him?

15 A. Of course, it mattered.

16 Q. Well, you could still use him as an informant,
17 it wouldn't preclude you from using him as an informant,
18 right?

19 A. Not that alone, no.

20 Q. Okay. You could also use him if his crime
21 involved an act of violence to another person?

22 A. I could.

23 Q. Okay. You could also use him if he was a
24 habitual criminal?

25 A. I could.

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1 Q. Okay. And you could also use him if he had
2 been adjudged guilty on another case?

3 A. I could.

4 Q. Okay. So, these 1 through 6 requirements, they
5 only applied if you were working with informants who
6 were trying to work off a drug case on the street,
7 right?

8 A. That's incorrect. These rules applied in
9 writing because we were trying to watch over the cops,
10 too, on Page 154-16, on those specific types of cases.

11 The factors that you've listed that you
12 think are important, I agree they are important, and in
13 any case, whether it's a murder or a DWI case, before
14 I'm going to use a snitch or an inmate as a witness, I
15 care about everything that's listed here. Of course,
16 it's important. We don't just blow it off and use every
17 inmate that comes walking around wanting to give
18 information. That ought to be pretty obvious to you
19 that I didn't use them all.

20 Q. Well, Mr. Beckcom, who testified in
21 Mr. Prible's case --

22 A. Yes, ma'am.

23 Q. -- Mr. Moreno, who testified in Mr. Herrero's
24 case, and Mr. Dominguez, who testified in Herrero's
25 case, all of them were involved in crimes involving the

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1 use a deadly weapon, an act of violence, they were all
2 habitual criminals and they had all been adjudged
3 guilty, right?

4 A. Those are typically the people that end up in
5 federal prison that can be witnesses.

6 MS. SCARDINO: Object --

7 A. So, yes.

8 Q. (BY MS. SCARDINO) Thank you.

9 Now, the DA didn't have different
10 guidelines for working -- for working with informants
11 that were incarcerated in the federal system versus the
12 state system, right?

13 A. No.

14 Q. Okay. Now, I mentioned earlier Jonathan Wayne
15 Jefferson, and you said you didn't recall that name; is
16 that right?

17 A. I do not.

18 Q. Okay. Do you remember that he was a trusted
19 informant for the SIS and FCI Beaumont and he had been
20 in the low unit of FCI Beaumont with Prible?

21 A. I don't remember his name.

22 Q. Okay. Do you remember if he reached out to
23 you?

24 A. I don't remember him by name.

25 Q. Did you reach out to him?

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1 A. I don't remember him. I mean, a lot of these
2 names I do remember but I don't remember that one.

3 Q. Did you reach out to anyone in FCI Beaumont low
4 about Mr. Prible's case?

5 A. The names we've talked about today I remember.
6 If there are additional names, you can throw them at me
7 but I can't come up with them off the top of my head.

8 Q. Do you recall -- and take the names aside.

9 A. Okay.

10 Q. Did you ever contact FCI Beaumont to ask to
11 speak to an inmate?

12 A. You mean like generically or by name?

13 Q. By name.

14 A. Yes.

15 Q. Okay. You -- you could call FCI Beaumont and
16 speak with a unit manager, I believe, and --

17 A. I would have Johnny Bonds do it --

18 Q. Okay.

19 A. -- because it was a pain and it took a lot of
20 time. It was very inefficient.

21 Q. Okay. So, he could -- he could call FCI
22 Beaumont and get an inmate that you needed to speak with
23 on the telephone, right?

24 A. No, it was never that easy. Johnny would call
25 and call and call and leave messages to try and get the

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1 case manager or whatever they're called, and they only
2 have certain hours of any day that they're allowed to
3 talk to their case manager, and the case manager has
4 lots of inmates. So, you had to get the case manager to
5 call you back, to have a time slot on a certain day
6 where the inmate would be there and we could be there at
7 that time to ever hook up on the phone.

8 Q. Okay. And when you did finally hook up on the
9 phone, the inmate would be in the unit manager's office
10 speaking with you on the phone; is that right?

11 A. Yes. Yes.

12 Q. Okay. And that phone call would not be
13 recorded, would it?

14 A. I don't know. That's a federal prison rule. I
15 don't know what they're recording when they're calling
16 from the case manager's office.

17 Q. Okay.

18 A. I don't know the rules.

19 Q. You do know that phone calls with inmates from
20 the usual inmate phones, those would have been recorded,
21 right?

22 A. I would assume so.

23 Q. Okay. I'm going to show you Exhibit 109.

24 MS. SCARDINO: How long have we been going
25 since the beginning?

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1 THE VIDEOGRAPHER: Total time?

2 MS. SCARDINO: Uh-huh.

3 THE VIDEOGRAPHER: 3 hours, 53 minutes.

4 MS. SCARDINO: Okay.

5 MS. MIRANDA: Did you say 109?

6 MS. SCARDINO: Uh-huh. Do you all have
7 that? I don't know if I passed it out.

8 THE WITNESS: What is it?

9 MS. SCARDINO: One second.

10 Q. (BY MS. SCARDINO) Actually, let's start with
11 109, Page 5.

12 MS. MIRANDA: Do you have another one?

13 MS. SCARDINO: Yes.

14 Q. (BY MS. SCARDINO) See 109-5, do you recognize
15 that handwriting as that of Johnny Bonds'?

16 A. I do.

17 Q. Okay. Turn to the next page. If you could
18 just go to the next page for me, please.

19 A. Okay.

20 Q. 109-6, it's dated December 10th, 2001 and --
21 and that's Johnny Bonds' handwriting again, right?

22 A. Yes.

23 Q. Okay. Were you at this meeting with
24 Mr. Jefferson with Mr. Bonds?

25 MS. MIRANDA: Objection, form.

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1 A. I don't know that this was a meeting.

2 Q. (BY MS. SCARDINO) You don't recall any sort of
3 meeting on December 10th, 2001 with Mr. Jefferson at the
4 low unit in Beaumont?

5 A. I don't remember Jefferson at all.

6 Q. Okay. So, I guess nothing came of this
7 meeting, right?

8 MS. MIRANDA: Objection, form.

9 A. I don't know if it was a meeting.

10 Q. (BY MS. SCARDINO) If it was -- if it was a
11 meeting.

12 A. Yeah, I really don't remember that name.

13 Q. Okay. And so, you wouldn't have disclosed
14 this -- this -- any sort of information that you and Mr.
15 Bonds had with Jefferson on December 10th, 2001 to
16 defense counsel, right?

17 MR. DOYLE: Objection, mischaracterizes
18 what she said. She didn't say she had testimony with --
19 met with him. She didn't know.

20 MS. SCARDINO: And that's fine.

21 Q. (BY MS. SCARDINO) And so, I -- I suppose it
22 wouldn't have been disclosed to defense counsel if you
23 didn't know that it happened, right?

24 A. I don't know.

25 Q. Okay.

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1 MS. SCARDINO: You know what, why don't we
2 take a short break. Go off the record.

3 THE VIDEOGRAPHER: The time is 2:29. We're
4 off the record.

5 (Short recess.)

6 THE VIDEOGRAPHER: This is the beginning of
7 file 6. The time is 2:44. We are on the record.

8 Q. (BY MS. SCARDINO) I'm going to show you
9 Exhibit 170, Ms. Siegler. This is the inmate phone list
10 for Michael Beckcom dated December 19th, 2001. And you
11 see that he added your name to his phone list on that
12 day?

13 A. I see that.

14 Q. Okay. That was your direct line at the DA's
15 office?

16 A. It wasn't my direct line but it was to major
17 offenders.

18 Q. Okay. And if you go to Page 4 of that Exhibit
19 170, you see your name is written down there as well?
20 It's about seven up from the bottom.

21 A. This is the printout, yes, I see that.

22 Q. Yes. Saying that he added you on February 5th,
23 2002?

24 MR. DOYLE: The one that says Page 30?

25 A. Yes.

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1 MS. SCARDINO: Yes. I'm sorry.

2 Q. (BY MS. SCARDINO) Okay. And then if you go up
3 a few more from that, it says, "Lilian Thorn, friend."
4 Do you see that?

5 A. I see her name, yes.

6 Q. Do you know Lilian Thorn?

7 A. I've heard that name before but I don't know
8 why.

9 Q. Do you remember that she's Foreman's mom?

10 A. No, I wasn't thinking of that. I was thinking
11 of a white lady, so, no.

12 Q. Okay. Did you ever speak with Ms. Thorn?

13 A. No.

14 Q. So, you'll agree that every time you're -- oh,
15 if you go to the follow -- the next page, this is his
16 printout of his phone calls in 2002 from the inmate
17 phones.

18 A. Okay.

19 Q. And we understand those are different from the
20 unit managers' phones.

21 A. Okay.

22 Q. Okay. And so, every time that number 6178
23 appears, that phone call was made to you, right?

24 A. No. As I said, 6178 went to major offenders.
25 You have Special Crimes. It has four divisions, each

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1 with their own number. One of those was major
2 offenders. It wasn't my direct line.

3 Q. Okay. Would he have been speaking with anyone
4 else at the DA's office?

5 A. There were five -- five or six other
6 prosecutors, two or three investigators.

7 Q. Do you know if he was speaking to any other
8 investigators or prosecutors during the time that you
9 were working with him on the Prible case?

10 A. You said this is the inmate phone.

11 Q. Right. This is Mr. Beckcom's phone records
12 from 2002 --

13 A. So, he had his own phone?

14 Q. -- of phone calls he made from the inmate
15 phones.

16 A. He had his own phone?

17 Q. No. This is from the inmate phones at FCI
18 Beaumont.

19 A. Well, how do you know they're from Michael
20 Beckcom?

21 Q. Because if you go to the top, it says, "Inmate
22 name Michael Beckcom," and these were produced to us by
23 the Board of Prisons. And so, my question to you is
24 when that number -- the 6178 number appears on his phone
25 list, that phone call was going to the Harris County

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1 DA's office, right?

2 A. That is correct.

3 Q. Okay. But you're saying he might have been
4 talking to other people in the office at the same time
5 as he was talking with you, so, you didn't necessarily
6 speak with him at those -- on those phone calls?

7 A. I'm saying that if he called 6178, the -- the
8 major offenders number, depending on how long the call
9 went or if he was placed on hold, he might not have ever
10 connected with me. He could have called just to try and
11 talk with me. I might not have been there. I might not
12 have taken the call. So, just because there's a call
13 made to 6178 doesn't mean he necessarily ever even
14 connected with we.

15 Q. Okay. It was an attempt by him to call you at
16 least?

17 A. Yes.

18 Q. Okay. And you'll see on Exhibit 170 that he
19 called that 6178 number that he had put on his phone
20 list as belonging to you, he called it on April 4th,
21 2002?

22 A. Can you show me? Otherwise, it will take us a
23 while.

24 Q. I'll tell you what, they're highlighted.

25 A. They are?

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1 Q. Yep. So, if you go to -- they go in descending
2 order.

3 A. Okay.

4 Q. So, if you go to Page 64 down there, at the
5 Bates label 64.

6 A. Where is the page?

7 MR. DOYLE: Right here, the Bates.

8 Q. (BY MS. SCARDINO) Bates label 64 down there.
9 Do you see highlighted at the top?

10 MR. DOYLE: Do you see down here 64?

11 A. I can't read it, though. Tell me which one.

12 MR. DOYLE: But I don't see the
13 highlighting.

14 Q. (BY MS. SCARDINO) Okay. So, it's that -- it's
15 that -- maybe yours didn't -- it didn't show up. Sorry.
16 So, let's -- let's look at April 4th, 2002. Can you see
17 the dates of this -- of these calls?

18 A. So, I go to April 4th, 2002?

19 Q. Uh-huh. And there's a phone call to that 6178
20 number for 6 minutes. Do you see that?

21 A. Not yet.

22 MR. DOYLE: This is on 64?

23 MS. SCARDINO: Yes.

24 THE WITNESS: Do you see it?

25 MR. DOYLE: What time was it? Do you know?

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1 MS. SCARDINO: 11:08 a.m.

2 MR. DOYLE: April 4th. Okay.

3 Q. (BY MS. SCARDINO) Would it be quicker if I
4 check it for you?

5 A. Yes, it would.

6 MR. DOYLE: This one right here, Kelly.

7 Q. (BY MS. SCARDINO) Here.

8 A. Okay.

9 Q. Look at this. Look at this. This one is
10 highlighted. Okay.

11 A. Is this the first one?

12 Q. Well, go to Page 64. Is that 64? Yeah. Okay.
13 So, the one that's highlighted, he called you on April
14 4th, 2002, right?

15 A. I see that.

16 Q. Okay. He called you again on --

17 A. Wait. Wait. Wait. It's for only how many
18 minutes?

19 Q. 6 minutes.

20 A. And what time is the call?

21 MR. DOYLE: 11:08. Is that right?

22 A. 6 minutes doesn't mean he got in touch with me.
23 He could have been put on hold and I never picked up the
24 call.

25 Q. (BY MS. SCARDINO) Do you recall 16 years -- or

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1 15 years ago that that happened?

2 A. Oh, I recall that I was so busy, they would be
3 calling, "Kelly Siegler, line whatever," and I could
4 never get all the calls. Yes, it happened all the time.

5 Q. Okay. So, you deny speaking with him on April
6 4th, 2002?

7 A. No. I don't remember, but just because it says
8 he called 6178 and the call lasted 6 minutes doesn't
9 mean that we actually spoke. That's what I'll say.

10 Q. Okay. Now, going to April 17th, 2002 --

11 A. The next page?

12 Q. So, it's the next page back.

13 A. Back?

14 Q. Well, yeah, we're going in reverse order here.

15 A. Okay.

16 MR. DOYLE: Page 63.

17 Q. (BY MS. SCARDINO) 4-17-02.

18 A. Okay.

19 Q. He called your line for 2 minutes. Do you see
20 that?

21 A. Yes.

22 Q. And on April 24th, 2002 --

23 A. I'm pretty sure that wasn't a connected call to
24 me for only 2 minutes. The next one?

25 MS. SCARDINO: Objection, nonresponsive.

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1 Q. (BY MS. SCARDINO) Do you have any evidence
2 that that wasn't a connected -- connected call or are
3 you just speculating?

4 A. I don't believe that I talked to him on a phone
5 call that lasted only 2 minutes.

6 Q. So, you're denying that you spoke with him on
7 that date?

8 A. I don't remember that call, no.

9 Q. You're denying that you spoke with him on that
10 date or you just don't remember?

11 A. I don't remember. I don't remember.

12 Q. You don't remember?

13 A. It doesn't make any sense that the call would
14 last 2 minutes.

15 Q. If you look at -- going up to April 24th, 2002,
16 another phone call to your office?

17 A. Again for 2 minutes.

18 Q. Okay. And on May 15th, 2002.

19 A. I see May 14th. Is that right?

20 Q. I'm sorry. May 14th, 2002.

21 MR. DOYLE: What page?

22 MS. SCARDINO: 62. Sorry.

23 MR. DOYLE: 62.

24 Q. (BY MS. SCARDINO) Another phone call to your
25 number?

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1 A. For 3 minutes.

2 Q. Uh-huh. And July 12th, 2002, at the top there,
3 it's a phone call for 1 minute?

4 A. For 1 minute, I see that.

5 Q. And on July 16th, 2002, there's a couple of
6 phone numbers -- phone calls?

7 A. I see those.

8 Q. Do you see that?

9 A. For 2 minutes and for 1 minute.

10 Q. Uh-huh. And then there's 3 times -- 3 phone
11 calls on October -- I mean, on August 2nd, 2002. Do you
12 see that?

13 A. So, 3 calls on the same date, which means that
14 he, obviously, didn't get ahold of me for the 1 minute
15 call or the 3 minute call because there's a 9 minute
16 call, too.

17 Q. Okay. So, whenever he would call you and leave
18 a -- he would leave a message, I suppose, with your
19 office?

20 A. He would call 755-6178 and get the main
21 receptionist, who would then put him through to my
22 secretary, Esmeralda, and then she would try to find me
23 or take a message, which is probably why there's so
24 2 minute, 1 minute and 3 minute calls, and they never
25 did get ahold of me.

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1 Q. And you would then return his phone call by
2 calling his unit manager to have the conversation on
3 that phone?

4 A. No. I got a lot of calls that I didn't return.

5 Q. So, you're saying that he kept calling you over
6 and over, he was your witness in -- in Prible's case and
7 you never returned his phone call, is that your
8 testimony?

9 A. I did return some of the phone calls. I said
10 that I don't remember returning all of these individual
11 phone calls.

12 Q. Okay. But some of those phone calls that you
13 returned, you would have called the unit manager, would
14 have put Mr. Beckcom on the telephone, right --

15 A. Yes.

16 Q. -- like we discussed earlier?

17 A. Yes.

18 Q. On Exhibit 171 --

19 A. This is a different color, so, that goes back
20 to you, right?

21 Q. Yeah. Thanks.

22 Exhibit 171 is telephone records for Nathan
23 Foreman produced by the Board of Prisons. And you see
24 on the first page of that that Mr. Foreman added you to
25 his phone record -- or his phone list on October 3rd,

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1 2001, right?

2 A. I see that. I also notice that now he has the
3 right number.

4 Q. Right, he has the correct number. And this is
5 almost two months after you spoke with him in August
6 8th, 2001 and determined he was lying about Mr. Prible's
7 case, right?

8 A. That's what the date says, yes.

9 Q. Okay. And there are no phone calls to you, if
10 you look at Mr. Foreman's list, in 2002. Do you see
11 that?

12 A. Does this cover the whole year?

13 Q. Yeah. Well, yeah. I'm just asking you -- it
14 looks like it covers from January to October, 2002. And
15 no where -- I'll represent to you that no where in that
16 list is a phone call to that 6178 number.

17 A. Okay.

18 Q. But you were speaking with Mr. Foreman during
19 this time, correct?

20 A. No.

21 Q. You weren't speaking with him?

22 A. Not that I remember.

23 Q. Is it your testimony that you never spoke with
24 him again after August 8th, 2001?

25 A. That was the day of the downtown fed facility?

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1 Q. Uh-huh.

2 A. I never talked to him again.

3 Q. You never talked to him again?

4 A. Not that I remember.

5 Q. Now, if you -- looking at Exhibit 172, these
6 are the phone records for Jesse Moreno. This is dated
7 April 26, 2001. You see that he puts your name down on
8 his phone list. And this is the one we had discussed
9 earlier, right? It was a different number, the 5800
10 number?

11 A. Yes.

12 Q. Okay. And, again -- and you were speaking --
13 you did speak with Mr. Moreno on the phone leading up to
14 Mr. Herrero's trial, right?

15 A. I know I got the letter, the letter that we
16 talked about. I know that I went to see him at some
17 point. Whether or not there was a phone call in between
18 before I went to see him, I don't remember.

19 Q. Okay.

20 A. I would think there was but I don't remember
21 for sure.

22 Q. Right. You would think there would be some
23 communication before the testimony at trial, before --

24 A. Well, no, I went to see him.

25 Q. Uh-huh.

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1 A. Your question was was there a phone call.

2 Q. Okay. You think there might have been a phone
3 call in between that initial visit and when you went to
4 see him before trial?

5 A. No.

6 Q. I'm sorry.

7 A. He writes me -- he writes me a letter. He
8 writes me a letter. His mom writes the letter.

9 Q. Uh-huh.

10 A. There might have been a phone call.

11 Q. Okay.

12 A. I don't remember. I did go see him.

13 Q. Okay. And that phone call that there might
14 have been, would that have been on the unit manager's
15 telephone?

16 A. It had to be.

17 Q. Okay.

18 MR. DOYLE: Don't keep me guessing. Is his
19 number in here?

20 MS. SCARDINO: I'm sorry?

21 MR. DOYLE: Is there -- are there any calls
22 in here?

23 MS. SCARDINO: No.

24 MR. DOYLE: Okay.

25 MS. SCARDINO: No. No.

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1 MR. DOYLE: I just didn't want --

2 MS. SCARDINO: No. Sorry.

3 Q. (BY MS. SCARDINO) Okay. And sometimes BOP
4 employees would call you about cases that you were
5 working on with these inmates, would they not?

6 A. No.

7 Q. Never?

8 A. Not that I remember. They were too busy.

9 Q. Did you know anyone that worked at FCI Beaumont
10 before you worked on Mr. Prible and Mr. Herrero's case?

11 A. An employee?

12 Q. Yes.

13 A. I don't think so.

14 Q. Had you ever dealt with informants in FCI
15 Beaumont before?

16 A. Had I ever been there ever before, maybe, but I
17 don't remember for sure.

18 Q. You don't remember having a preexisting
19 relationship --

20 A. No.

21 Q. -- with any BOP employees at FCI Beaumont?

22 A. No.

23 Q. Okay. And, again, here we're going to Exhibit
24 152, and I was supposed to show you all that legible
25 copy on -- and I promise I'll do that when we get on a

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1 break.

2 A. These are the pink slips, right? That's why
3 they're so dark?

4 Q. These are the pink slips, yeah. And I don't
5 have the originals but you might be able to see them on
6 the screen at a break.

7 But I'll -- I'll represent to you that one
8 of these pink slips in Exhibit 152 that was produced by
9 the DA's office in this case, it shows Lieutenant Robert
10 Clark from FCI Beaumont called Kelly re Herrero. So,
11 does that refresh your memory as to whether any BOP
12 employees ever called you to discuss the Herrero case?

13 A. No.

14 MR. DOYLE: Do you know what date?

15 MS. SCARDINO: I do believe it's dated.

16 MR. DOYLE: I thought you might have it in
17 your notes.

18 MS. SCARDINO: Let's see. I know I did,
19 too. I don't see it dated on here. I think there is a
20 date. I'm happy to -- I'll put it out so I remember to
21 look at it at the break.

22 MS. MIRANDA: Which one is it?

23 MS. SCARDINO: I'll have to do that, too.

24 MS. MIRANDA: Okay.

25 MS. SCARDINO: I mean, these are really bad

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1 copies. Sorry.

2 Q. (BY MS. SCARDINO) Okay. Now, you said a
3 moment ago, I believe, that you did not speak with
4 Mr. Foreman again after that August 8th, 2001 meeting
5 with him in --

6 A. Not that I remember.

7 Q. Okay. Let me show you Exhibit 111. Actually,
8 we're going to come back to 111 because I don't see it
9 right here.

10 Oh, here it is.

11 Okay. Exhibit 111 is a letter from Alan
12 Percely, Mr. Foreman's attorney, to you on November
13 12th, 2001, if you want to take a moment to read it.

14 A. Okay.

15 Q. And he says, "As you are already aware, I am
16 Mr. Foreman's attorney on federal and state criminal
17 matters," right?

18 A. That's what he said.

19 Q. So, had you already been talking with
20 Mr. Percely about Mr. Foreman?

21 A. Actually, I think what happened was he came up
22 to me one day in court and said that he represented
23 Nathan Foreman, and I thought to myself, "Of course, you
24 do," and that was it.

25 Q. Okay. And then he reaches out to you on this

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1 November 12th, 2001 letter, right?

2 A. Yes.

3 Q. Okay. But you didn't speak with him another
4 time previously to this on the telephone or anything
5 else?

6 A. No.

7 Q. Okay. And in his letter, he said that Nathan
8 Foreman told him that he has information that will lead
9 you to the weapon that was used in the murder case that
10 you are preparing to go to trial on in the near future.
11 Do you see that?

12 A. I see that.

13 Q. Okay. How did Mr. Foreman know that the murder
14 weapon in Mr. Prible's case had never been found?

15 A. I don't evening think they're talking about
16 Prible. I think it's Alan Percely talking bull with
17 Nathan Foreman, who is talking bull, and I don't know
18 what they're talking about, which proves the point.

19 Q. So, you don't --

20 A. They were both full of it.

21 Q. Okay. So, you don't know what case he's
22 referring to in this letter, whether it's the Prible
23 case or the Herrero case?

24 A. I tried a lot of cases in '02. It could have
25 been one of the other ones that I tried. It doesn't

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1 mean it's Prible --

2 Q. Okay.

3 A. -- or Herrero.

4 Q. And Mr. Percely proposes a deal in exchange for
5 whatever information Mr. Foreman has, right?

6 A. He tries to, yes.

7 Q. Okay. And instead of telling Percely -- or
8 ignoring this letter or telling him to get lost or
9 telling Foreman to get lost, instead, you set up a
10 face-to-face visit with Mr. Foreman to discuss this new
11 information he had, didn't you?

12 A. The letter is dated November 12th of '01 and
13 the meeting with Foreman was August of '02?

14 Q. August 8th, 2001 was the initial meeting with
15 Foreman.

16 A. Okay. So, ask me the question again. So, the
17 letter came after the meeting?

18 Q. Yes, the letter came after the meeting. And
19 I'm asking you after you got this letter of November
20 12th, 2001, you could have told Percely to get lost,
21 right?

22 A. I could have.

23 Q. You could have told Foreman, "I never want to
24 talk to you again. You're a liar," right?

25 A. I could have.

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1 Q. Okay. You could have ignored them, right?

2 A. I did.

3 Q. But, instead, after you received this letter,
4 you arrange for another face-to-face meeting with
5 Mr. Foreman at FCI Beaumont, didn't you?

6 A. Not that I remember.

7 Q. I'm going to show you Exhibit 77.

8 MS. SCARDINO: Do you have it?

9 MS. MIRANDA: I'm looking.

10 MS. SCARDINO: Okay.

11 MS. MIRANDA: I'm looking.

12 Yes, I have it.

13 Q. (BY MS. SCARDINO) Now, Exhibit 77 is a letter
14 dated November 20th, 2001 from Johnny Bonds to
15 Lieutenant Clark, requesting that he -- you and he be
16 allowed to visit with Nathan Foreman on December 10th,
17 2001. Do you see this?

18 A. I see that.

19 Q. And this letter was written eight days after
20 Mr. Percely's letter to you was written, right, on
21 November 12th, 2001?

22 A. Yes.

23 Q. And earlier you said the letters might have
24 been -- taken about a week to get to you. So, that
25 would make your receipt of that letter about November

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1 12th -- 19th, 2001?

2 MS. MIRANDA: Objection, form.

3 A. Let's see. You've got me confused.

4 Q. (BY MS. SCARDINO) Okay.

5 A. Say that again.

6 Q. Earlier, I forget which letter we were
7 referring to but you said it might have taken a week for
8 the letter to -- it was one of the informant letters --
9 to get to --

10 A. From the inmates, not from Alan Percely.

11 Q. Okay. So, when do you think you would have
12 received this November 12th, 2001 letter from Alan
13 Percely?

14 A. Well, I would hope the next day.

15 Q. Within a couple of days?

16 A. (Witness indicated by nodding her head
17 affirmatively.)

18 Q. Okay. And so, pretty soon after receiving this
19 letter, you have Johnny Bonds request another meeting
20 with Mr. Foreman at FCI Beaumont, right?

21 A. This is Ted requesting it for Johnny and me.

22 Q. I'm sorry.

23 A. But yes.

24 Q. Yes. So, you, obviously, asked Mr. Wilson to
25 request this meeting, right?

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1 A. Right.

2 Q. Okay. So, even though he lied to you back in
3 November -- or in August, a few months earlier, maybe
4 now he's got some good information for you, right?

5 A. I don't remember why we would have asked to go
6 see him again because Johnny and I both believed when we
7 walked away from the meeting with Nathan Foreman at the
8 downtown Houston facility that he was not being
9 truthful.

10 Q. I'm going to show you Exhibit 78. Exhibit 78
11 is a November 26, 2001 letter from Ted Wilson to
12 Lieutenant Robert Clark again at FCI Beaumont medium.
13 And he says, "I'm respectfully requesting that you
14 permit Assistant District Attorney Kelly Siegler and
15 Harris County District Attorney's Investigator Johnny
16 Bonds in your facility to interview an inmate by the
17 name of Michael Beckcom on December 10th, 2001." Do you
18 see that?

19 A. I do.

20 Q. Okay. And that's the same date that you were
21 going to interview Mr. Foreman, right?

22 A. Well, the letter is the same date. Did we ask
23 for the same date? Oh, yes. December 10th, yes.

24 Q. Yeah. The letters are different dates --

25 A. December 10th.

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1 Q. -- but the date of the meeting requested is the
2 same?

3 A. Yes.

4 Q. So, you requested to meet with both of those
5 inmates back to back on that date, right?

6 A. Yes.

7 Q. And on that date, December 10th, 2001, did you
8 also meet with Jonathan Jefferson at FCI Beaumont?

9 A. I still don't remember that name.

10 MS. MIRANDA: Objection, form.

11 Q. (BY MS. SCARDINO) When you went to Beaumont to
12 interview these inmates on December 10th, 2001, was
13 Mr. Bonds with you?

14 A. I remember for sure that the time we went to
15 Beaumont to interview Michael Beckcom -- I don't even
16 know if Johnny was there for that. I went to see
17 Michael Beckcom one time in person in Beaumont. I don't
18 remember the date.

19 Q. Would you have driven to Beaumont to meet with
20 these inmates with Mr. Bonds but once you got there
21 split up from Mr. Bonds for any reason?

22 A. He didn't have to babysit me. I could
23 interview by myself. It wasn't like I was scared. And
24 I might have gone by myself, too.

25 Q. Okay. But -- and I know that you're -- he's

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1 not babysitting you but it doesn't seem to make sense if
2 both of you were going and asking for these meetings
3 that you would have been -- wouldn't have attended all
4 of those meetings on October 10th, 2001 together --

5 A. Agreed.

6 Q. -- if you were both in Beaumont?

7 A. Agreed.

8 Q. Okay. Exhibit 87 is a criminal history report
9 for Mr. Jefferson. It's printed out by Mr. Bonds on
10 December 6th, 2001, just prior to that December 10th
11 requested meeting. Do you see that?

12 A. I do.

13 Q. Okay. And, again, that was standard procedure
14 whenever you and Mr. Bonds were going to interview a
15 witness or a potential suspect, you would run a criminal
16 history report on them?

17 A. Yes.

18 Q. I'm going to show you Exhibit 109-6. If you
19 can turn, it's on the second page of that. Exhibit
20 109-6 is Johnny Bonds' handwriting, correct?

21 A. It is.

22 Q. Okay. And it looks as if he had a -- a
23 conversation with Jonathan Wayne Jefferson on December
24 10th, 2001?

25 MS. MIRANDA: Objection, form.

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1 Q. (BY MS. SCARDINO) And I'm asking you if you
2 were present at any such meeting between Mr. Bonds and
3 Mr. Jefferson on that date?

4 MS. MIRANDA: Objection.

5 A. I just don't remember Jonathan Jefferson, the
6 name or a face. I don't remember that name.

7 Q. (BY MS. SCARDINO) Okay. So, you wouldn't have
8 told defense counsel about this meeting that you had
9 with him --

10 MS. MIRANDA: Objection, form.

11 Q. (BY MS. SCARDINO) -- if he wasn't important to
12 the case?

13 A. It was 15 years ago. I might have met him. I
14 don't know. I just don't remember today.

15 Q. You can't recall? Okay. Now, if you -- if --
16 if you had been at this meeting, would you have taken
17 notes like you did in that August 8th, 2001 meeting with
18 Foreman?

19 A. Not necessarily.

20 Q. Not necessarily?

21 A. (Witness indicated by shaking her head
22 negatively.)

23 Q. If you turn to Page 109-7 -- Exhibit 109-7, and
24 these, again, are notes in Johnny Bonds' handwriting,
25 right?

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1 A. Yes.

2 Q. And you see it looks like there he's
3 memorializing a meeting with Nathan Foreman on December
4 10th, 2001, which would have -- which corresponds to the
5 letter that I showed you earlier requesting a meeting
6 with Mr. Foreman on that date?

7 MS. MIRANDA: Objection, form.

8 A. It does.

9 Q. (BY MS. SCARDINO) Do you see that? Were you
10 present at this meeting with Mr. Bonds and Mr. Foreman?

11 A. If -- if Johnny would have been interviewing
12 Nathan Foreman, I would have been there.

13 Q. Okay. Would you have taken notes on that
14 meeting?

15 A. Not necessarily.

16 Q. If you had taken notes, where would they be?

17 A. They would be in the file but I probably didn't
18 take any.

19 Q. You wouldn't have destroyed notes about that
20 meeting or any other meeting, would you?

21 A. No. I didn't take a lot of notes.

22 Q. Let's look at Exhibit 78. Exhibit 78. Okay.
23 Exhibit 78 I showed you earlier, so, you should have a
24 copy of it, and it's that November 26th, 2001 fax from
25 Johnny Bonds to Lieutenant Clark.

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1 A. Okay.

2 Q. And on the fax, if you look at the front cover
3 sheet, it says, "Another visitation request letter. We
4 are supposed to be at your unit around 11:00 a.m. on
5 December 10th, 2001 to see Inmate Foreman. We also need
6 to see Inmate Beckcom after we talk to Foreman. See
7 attached letter. If there's a problem, please call me.
8 Thanks." Do you see that?

9 A. I do.

10 Q. Okay. And on that day when you met with
11 Mr. Beckcom -- you recall meeting with Mr. Beckcom that
12 day, right?

13 A. Yes.

14 Q. And did you meet with him in the lieutenant's
15 office?

16 A. I don't remember where we met.

17 Q. I'll -- I'll represent to you that was his
18 testimony at trial that you met in a lieutenant's
19 office.

20 A. That's what Beckcom said at trial?

21 Q. Yes.

22 A. It's in the transcript?

23 Q. That -- that you met at a lieutenant's office,
24 yes.

25 A. Okay.

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1 Q. Okay. Do you recall the name of that
2 lieutenant?

3 A. I do not.

4 Q. Okay. Do you -- and you knew at this time that
5 Mr. Foreman and Mr. Beckcom were cellmates at FCI
6 Beaumont, right?

7 A. I don't know if I knew that back then.

8 Q. When did you learn that?

9 A. I don't know that I've ever learned that. I've
10 seen that in your petition.

11 Q. You never knew at any time during your
12 prosecution of Mr. Prible's case that Foreman and
13 Beckcom were cellmates at FCI medium?

14 A. I don't remember if I knew that. I knew that
15 they all -- they all hung out together on the yard
16 working out outside. I knew that but who was whose
17 cellmate, I don't know if I ever knew that.

18 Q. And you don't -- you remember meeting with
19 Beckcom on December 10th, 2001 but not with Foreman; is
20 that correct?

21 A. I remember the Beckcom meeting. We -- it looks
22 like from your paperwork we met with Beckcom that same
23 day, too. If Johnny told you that we met with Foreman
24 the same day, then we did, and I just don't remember it.
25 If Johnny remembers it, then that's what happened.

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1 Q. And that meeting would have been in the same
2 office presumably if you're --

3 A. You would think so.

4 Q. You would think so. So, one would be coming in
5 and one would be leaving?

6 A. Unless they were in separate areas and it was
7 easier for them to move us than them.

8 Q. Do you have any recollection of that being the
9 case?

10 A. We moved around a lot there. We went wherever
11 they told us.

12 Q. Okay. I'm asking you specifically on December
13 10th, 2001 when you asked to meet with Beckcom
14 immediately after Foreman, do you have a specific
15 recollection of them moving you to a different part of
16 the prison to meet with these two individuals?

17 A. I don't -- no, I don't remember where in the
18 prison we met with either one of them.

19 Q. Do you know if Beckcom and Foreman passed each
20 other coming and going that day to the meeting?

21 A. I have no idea.

22 Q. Presumably they're cellmates, so, they're
23 talking about this case together, right?

24 MS. MIRANDA: Objection, form.

25 A. I didn't know they were cellmates.

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1 Q. (BY MS. SCARDINO) Let me show you Exhibit
2 109-8. Do you have it, 109-8? Sorry, I thought I
3 already gave it to you.

4 A. 109-8?

5 Q. 8.

6 MR. DOYLE: Yes.

7 A. I have your yellow one, too, so --

8 Q. (BY MS. SCARDINO) That's the other one
9 actually. That's the -- oh, it is on there. Here, let
10 me --

11 A. Trade?

12 Q. No. That's fine. I didn't know that you had
13 the complete -- the complete thing.

14 Okay. 109-8, again, this is Mr. Bonds'
15 handwriting, right?

16 A. Yes.

17 Q. And it looks to be a conversation or a
18 memorialization of the meeting that he had with
19 Mr. Beckcom on December 10th, 2001 in which you were
20 also present, right?

21 MS. MIRANDA: Objection, form.

22 A. I see the name Michael Beckcom on the first
23 line. I can't read the rest of it, if you want to read
24 it to me.

25 Q. (BY MS. SCARDINO) Okay. It says, "12-10-01,

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1 Michael Beckcom. Nathan never told Mike about Kelly and
2 Bonds." And Nathan there is referring to Nathan
3 Foreman, right?

4 A. It would be Nathan Foreman.

5 Q. So, at this conversation -- or this meeting
6 that you and Mr. Bonds had with Beckcom, you all were
7 discussing Nathan Foreman and his role in this case,
8 right?

9 A. Not necessarily.

10 Q. Well, why else would Nathan Foreman's name
11 appear on these notes?

12 A. We would ask Michael Beckcom where all he had
13 information about Prible, and Johnny could have just
14 made a note, "It wasn't from Nathan." Johnny could have
15 just made that note.

16 Q. He could have just made a note, "It wasn't from
17 Nathan," just out of the blue, "It wasn't from Nathan"?

18 A. If we had just interviewed Nathan Foreman right
19 before Beckcom like you're saying the paperwork shows.
20 I mean, you should ask Johnny Bonds that question, not
21 me.

22 Q. I have asked Johnny Bonds that question but you
23 were also at the -- that meeting, right?

24 A. Yes, but these aren't my notes.

25 Q. Okay. But if you had asked Mr. Beckcom where

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1 he got information, would he have said to you in
2 response to that, "Well, I didn't get it from Nathan
3 Foreman"?

4 A. No, but you need to keep in mind that Johnny
5 and I already didn't have a very good view of Nathan
6 Foreman's credibility, so, we wanted to make sure
7 Michael Beckcom wasn't getting it from Nathan Foreman --

8 Q. So, did --

9 A. -- since we already thought he was a liar.

10 Q. And so, did you tell Michael Beckcom, "Don't
11 talk to Nathan Foreman. He's a liar"?

12 A. I doubt it.

13 Q. Did you bring Nathan Foreman's name up in this
14 conversation with Michael Beckcom?

15 A. Well, his -- his name is mentioned in Johnny
16 Bonds' notes, so, his name might have come up.

17 Q. I'm going to show you Exhibit 174. Exhibit
18 174, do you recognize this as the 10-page handwritten
19 statement that Mr. Beckcom gave to you and Mr. Bonds at
20 that December 10th, 2001 meeting?

21 A. I don't remember that he gave this to us that
22 day. Johnny wrote down "12-10-01" and his initials on
23 that day.

24 Q. And had you met with Mr. Beckcom previously?

25 A. In person, no.

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1 Q. Had you spoken with him on the phone?

2 A. Yes.

3 Q. Okay. Is it -- and you say you didn't know if
4 he had given it to you on these day -- on this day of
5 December 10th, 2001. When else might have -- he have
6 given it to you?

7 A. I thought he gave me this 10-page letter when
8 he came to the Harris County jail right before the
9 trial. That was what my memory was until just now.

10 Q. Okay. Had you asked Mr. Beckcom to take notes
11 of his communication -- his conversations with
12 Mr. Prible?

13 A. I did not.

14 Q. You did not?

15 A. No.

16 Q. Did you ask him to present you with a written
17 statement --

18 A. No.

19 Q. -- about Mr. Prible's -- what he had learned
20 about Mr. Prible's case?

21 A. No.

22 Q. Okay. Did you use this statement that
23 Mr. Beckcom gave to you at that December 10th, 2001
24 meeting as a script for Mr. Beckcom's testimony at
25 trial?

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1 A. As a script, no. I'm sure I -- I referred to
2 it, I used it, I looked it over to make sure I had it
3 all right in my head, but as a script, no.

4 Q. Did you give -- or did Mr. Beckcom keep a copy
5 or make a copy of this statement for himself? In other
6 words, did he give you his only copy or do you recall if
7 he made a copy of the statement himself?

8 A. I'm sure he would keep a copy for himself but
9 I'm just assuming.

10 Q. Did you ever --

11 MR. DOYLE: Don't assume.

12 THE WITNESS: I know.

13 Q. (BY MS. SCARDINO) Did you -- did you ever --

14 MS. SCARDINO: Objection to the coaching.

15 MR. DOYLE: Well, I just don't want her
16 speculating.

17 MR. RYTTING: You can't instruct the
18 witness.

19 Q. (BY MS. SCARDINO) Did you -- did you disclose
20 to Mr. Gaiser or Mr. Wentz that you met with
21 Mr. Jefferson, Mr. Foreman and Mr. Beckcom back to back
22 at FCI Beaumont on December 10th, 2001 to discuss
23 Mr. Prible's case?

24 A. I don't --

25 MS. MIRANDA: Objection, form.

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1 A. I don't remember.

2 Q. (BY MS. SCARDINO) Now, you were talking -- you
3 began talking with the assistant U.S. attorney for
4 Michael Beckcom's case in California months before
5 Prible's trial, right?

6 A. Months before Prible's trial?

7 Q. Uh-huh. You were already in talks with the
8 U.S. attorney about a possible sentence reduction for
9 Beckcom in this case?

10 A. I think I might have called to introduce myself
11 to make sure I had the right prosecutor. I don't think
12 we could talk much beyond that because nothing had
13 happened yet.

14 Q. Why would you have called him to introduce
15 yourself as the prosecutor?

16 A. To find out if he's the right prosecutor.

17 Q. Okay. But why would you have done that before
18 the trial -- before Mr. Prible's trial?

19 A. Just to find out if he's the right prosecutor,
20 to find out about Michael Beckcom, to find out about the
21 situation.

22 Q. The situation meaning what? Mr. Beckcom's
23 sentence?

24 A. Mr. Beckcom's sentence, Mr. Beckcom's crime,
25 what his fed -- fed prosecutor thought about him and the

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1 whole process.

2 Q. I'm going to show you Exhibit 181. Exhibit 181
3 is a March 4th, 2002 letter from Mark Cullers to you and
4 it says, "Enclosed please find the federal trial
5 testimony of Mike Beckcom." And he -- he goes on to
6 say, "I will forward a printout of his docket sheet so
7 you can see exactly his sentence in federal court,"
8 right?

9 A. That's what the letter says, yes.

10 Q. Okay. And so, when you called -- you reached
11 out to Mr. Cullers, and you told him that Mr. Beckcom
12 was a potential informant for you in this Prible case
13 and that you were interested in seeing what his sentence
14 was, correct?

15 A. Among other things, yes.

16 Q. What else did you talk with him about?

17 A. The crime Beckcom was in jail for and what this
18 fed prosecutor thought about Beckcom.

19 Q. Okay. Did you discuss the possibility of a
20 Rule 35 reduction for Mr. Beckcom if he testified in
21 your case?

22 A. If he testified truthfully and completely in my
23 case, yes.

24 Q. But you did discuss that --

25 A. Yes.

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1 Q. -- with Mr. Cullers?

2 And I'm going to show you Exhibit 126.
3 Exhibit 126 is a March 5th, 2002 letter from Mr. Cullers
4 to you enclosing the initial Texas Rangers report
5 regarding the murder of Nick Brueggen, who was
6 Mr. Beckcom's victim, right?

7 A. I don't remember the name but I remember this.

8 Q. Okay. It says, "Thought you might find it
9 helpful. Mike Beckcom was sentenced to 135 months,"
10 right?

11 A. That's what this says, yes.

12 Q. Yes. And so, this shows that you all had
13 discussed Mr. Beckcom's sentence, correct?

14 A. Yes.

15 Q. And there would have been no reason for you to
16 discuss Mr. Beckcom's sentence with Mr. Cullers if not
17 in the context of a potential Rule 35 motion down the
18 road, right?

19 A. Well, most likely that was the reason but I
20 would still want to know what his sentence was and what
21 he did.

22 Q. And Mr. Beckcom knew that you were in talks
23 with Cullers leading up to Mr. Prible's trial, right?

24 A. Yes.

25 Q. Okay. And he knew about these conversations

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1 because you wanted to reassure him that if he testified
2 truthfully in Mr. Prible's case that a Rule 35 motion
3 might be had, right?

4 A. Who is "he"?

5 Q. Mr. Beckcom.

6 A. Say the question again.

7 Q. You said that Mr. Beckcom was aware that you
8 were speaking with Mr. Cullers leading up to
9 Mr. Prible's case, and I'm asking you if the reason you
10 told Mr. Beckcom that you were communicating with
11 Mr. Cullers was so Mr. Beckcom would be reassured that a
12 Rule 35 motion would be forthcoming in his case if he
13 testified truthfully; is that correct?

14 A. Yes.

15 Q. And if you look at Exhibit 127 --

16 MS. SCARDINO: I have one copy. So, let me
17 let her read it and then I'll --

18 MR. DOYLE: Read it and then I'll look at
19 it.

20 A. Isn't this the one you already showed me?

21 Q. (BY MS. SCARDINO) Maybe I have.

22 MS. MIRANDA: What number is that?

23 MS. SCARDINO: 127. Maybe that's why I
24 don't have another copy.

25 MS. MIRANDA: I have it right here.

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1 A. I think you showed me this already.

2 Q. (BY MS. SCARDINO) Okay.

3 A. Yes.

4 Q. Okay. Now, this is undated, right, this
5 letter? There's no date on this?

6 A. Correct.

7 Q. Okay. And Mr. Beckcom is asking you for
8 reassurance and -- and you mentioned that you did give
9 him reassurance at some point by --

10 A. This letter is different. It's not really
11 reassurance. He's asking for other things, different
12 things.

13 Q. And in addition, he's also asking you, first of
14 all, if you could -- if there was anything you could do
15 to help him correct some of the mistakes the feds made
16 in his case?

17 A. He wants me to help him file nunc pro tunc and
18 do all kinds of things, which have nothing to do with
19 the Prible case.

20 Q. Okay. Did you help him prepare a nunc pro tunc
21 in his state case?

22 A. No.

23 Q. Do you know if he prepared a nunc pro tunc in
24 that case?

25 A. You showed me something earlier where it looked

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1 like he had --

2 Q. Uh-huh.

3 A. -- because the clerk answered him back that the
4 judgment spoke for itself and he couldn't get a nunc pro
5 tunc but that was between him and the clerk in that
6 county.

7 Q. So, you had nothing to do with him filing a
8 motion for nunc pro tunc?

9 A. Not that I remember, no.

10 Q. Did you have any communications at any time
11 with the prosecutor in the state case about his
12 conviction or sentence in that case?

13 A. No.

14 Q. He also says in this Exhibit 127, "I've
15 currently filed for a name change to the name that I was
16 supposed to keep while in the fed's custody but I keep
17 meeting resistance with the clerk in Beaumont. Can you
18 give me any advice on this?"

19 A. Yeah, I don't remember anything about that.

20 Q. You don't remember giving -- you didn't give
21 him any advice on the name change?

22 A. No.

23 Q. Okay. He also says, "Can you give me any
24 reassurance that the feds are going to do the right
25 thing on this case?"

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1 A. Well, they all ask that.

2 Q. And you gave him some reassurance, right?

3 A. I'm sure I told him the same thing I tell all
4 of them.

5 Q. Which is what?

6 A. "Testify truthfully and completely about the
7 facts of the case, and if you do, when you do, I'll tell
8 your fed prosecutor, and they take it from there."

9 Q. And you also reassured him by telling him that
10 you were already in communication with that prosecutor?

11 A. Yes.

12 Q. He also says in that letter, Exhibit 127, "I
13 may have a solution to these problems if you can assist
14 me in making contact with the DEA and an FBI agent.
15 Another inmate, Anthony Davi, and I have come onto a
16 couple of situations that would interest both of these
17 agencies."

18 Now, did you contact -- or -- or -- contact
19 Mr. Beckcom to discuss with him this information that he
20 claimed he and Anthony Davi had?

21 A. No.

22 Q. You never --

23 A. I don't remember.

24 Q. -- spoke with him about that?

25 A. I don't remember that. I don't know what that

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1 is.

2 Q. Okay. It does not ring a bell, you never
3 reached out to him about that?

4 A. I don't remember any of that.

5 MR. DOYLE: How are we doing, Gretchen?

6 MS. SCARDINO: We can -- let's see. Let me
7 get through this line of questioning and we can take a
8 quick break. How long have we been going?

9 MR. DOYLE: About 45 minutes.

10 MS. SCARDINO: Okay. Is that okay?

11 MR. DOYLE: I just need to make a call
12 shortly.

13 MS. SCARDINO: Okay. We can --

14 MR. DOYLE: If you give me five minutes,
15 that's all.

16 MS. SCARDINO: Yeah, that's fine. We
17 can -- we can do that. I'd just ask that you didn't --
18 wouldn't talk to the witness because we have a question
19 pending, that's all.

20 MR. DOYLE: I'm sorry. Go ahead with your
21 question.

22 MS. SCARDINO: No, it's all right if you --

23 MR. DOYLE: Go ahead. Go ahead.

24 MS. SCARDINO: Okay.

25 Q. (BY MS. SCARDINO) So, Exhibit 81 is a letter

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1 from Ted Wilson from the DA's office to Lieutenant Clark
2 at FCI medium, and it's asking -- he's respectfully
3 requesting permission for you and Mr. Bonds to interview
4 two inmates by the name of Michael Beckcom and Antone
5 Davi on May 6, 2002. Do you see that?

6 A. I see that.

7 Q. Okay. So, you did reach out to Mr. Beckcom and
8 take him up on this offer to discuss this other case
9 with him?

10 A. I -- I don't remember Antone Davi at all.

11 Q. Okay. Do you deny that you sent -- that this
12 letter was sent from your office to arrange a meeting to
13 discuss --

14 A. No. I see that.

15 Q. -- this with Mr. Beckcom and Mr. Davi?

16 A. I see that.

17 Q. Did you ever disclose to Mr. Prible's defense
18 counsel that you had set up this meeting with Mr. --
19 Mr. Beckcom to discuss this information that he claimed
20 to have with Mr. Davi?

21 A. I don't remember anything about Antone Davi or
22 any information, if there was any.

23 Q. Do you know if you only met with Mr. Beckcom
24 and Mr. Davi once on this May 6th, 2002 date?

25 MS. MIRANDA: Objection, form.

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1 A. I don't remember ever meeting with Antone Davi.
2 I don't remember that name at all.

3 MS. SCARDINO: Okay. Let's go ahead and
4 stop right here.

5 MR. DOYLE: Take about five minutes.

6 THE VIDEOGRAPHER: The time is 3:33. We're
7 off the record.

8 (Short recess.)

9 THE VIDEOGRAPHER: This is the beginning of
10 file 7. The time is 3:50. We are on the record.

11 Q. (BY MS. SCARDINO) Ms. Siegler, Beckcom
12 testified at Mr. Prible's trial that he had gotten your
13 name from Mr. Foreman. Do you remember that testimony?

14 A. I don't remember that part, no.

15 Q. Okay. Do you deny that that was the testimony?

16 A. You can show me the transcript.

17 Q. Okay. On Page 23 of Mr. Beckcom's testimony,
18 which is Volume 26, I believe, of the trial transcript,
19 you say -- you say, question, "Who was the person who
20 gave you my name?"

21 And he answers, "Nathan Foreman."

22 Next question, "And how did you know Nathan
23 Foreman?"

24 Answer, "He was -- he lived in my unit at
25 the prison and then ultimately became my cellmate.'

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1 A. Can I see that?

2 Q. Let me get you a different copy because this
3 one has my notes on it.

4 A. Okay.

5 Q. Do you -- are you disagreeing that that's what
6 I'm reading you? I understand I've been trying to give
7 you copies of everything but --

8 A. Well, I just would like to read --

9 Q. -- I do also want to keep --

10 A. -- the page before and the page after and be
11 real careful.

12 Q. Okay.

13 MS. SCARDINO: Let's go off the record.
14 I'll print you a clean copy real quick of the pages.

15 THE VIDEOGRAPHER: The time is 3:53. We're
16 off the record.

17 (Off the record.)

18 THE VIDEOGRAPHER: This is the beginning of
19 file 8. The time is 3:55. We are on the record.

20 Q. (BY MS. SCARDINO) Ms. Siegler, at the -- on
21 the break, we were -- let you read the pages previous to
22 this testimony by Mr. Beckcom on Page 23 of the Prible
23 trial transcript, right? You've read that?

24 A. Correct.

25 Q. And does that refresh your recollection that it

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1 was Nathan Foreman who gave Mr. Beckcom your name to
2 call you about Mr. Prible's case?

3 A. Yes.

4 Q. Okay. Exhibit 129 is a letter from you to Mark
5 Cullers, Beckcom's U.S. attorney out in California,
6 dated October 29th, 2002. And this was right after
7 Mr. Prible's trial, and you were informing him of
8 Mr. Beckcom's cooperation in that trial. Do you see
9 that?

10 A. Okay.

11 Q. Okay. And in that letter, Exhibit 129, you
12 tell Mr. Cullers that, "Michael Beckcom first came to my
13 attention when he made me aware that he had information
14 that would be helpful to my case." Do you see that?

15 A. I do.

16 Q. Okay. And there's nothing in this letter to
17 Mr. Cullers about how Mr. Foreman had given Mr. Beckcom
18 your name to call you about this case, right?

19 A. No.

20 Q. Mr. Foreman's name is not mentioned in this
21 letter at all?

22 A. It is not.

23 Q. Okay. And in the letter, you also state,
24 quote, "At that time, Beckcom was incarcerated at
25 Beaumont medium FCI with my trial defendant, Prible, and

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1 that is where and how Prible came into contact with
2 Beckcom and confided details of his capital murder
3 offense to Beckcom." Do you see that?

4 A. Where? Which paragraph?

5 Q. The second paragraph, second line.

6 A. Okay.

7 Q. In here, there's still no mention of
8 Mr. Foreman or this larger informant network, is there,
9 in this letter?

10 A. To Beckcom's fed prosecutor, no.

11 Q. That's right?

12 A. There is not.

13 Q. So, you never revealed to Mr. Cullers that
14 actually Beckcom's cellmate had come to you on August
15 8th, 2001, before he had even met Mr. Prible, to try to
16 set Mr. Prible up in this case and you determined that
17 he was a liar, right?

18 MS. MIRANDA: Objection, form.

19 MR. DOYLE: Objection.

20 A. That's incorrect.

21 Q. (BY MS. SCARDINO) You revealed all of that to
22 Mr. Cullers?

23 A. Mr. Cullers is Michael Beckcom's fed
24 prosecutor.

25 Q. I understand that.

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1 MS. SCARDINO: Objection, nonresponsive.

2 Q. (BY MS. SCARDINO) Did you reveal to
3 Mr. Cullers that you had met with Nathan Foreman about
4 Mr. Prible's case on August 8th, 2001 and determined
5 that he was lying?

6 A. No.

7 Q. Okay. You never mentioned Mr. Foreman at all
8 to Mr. Cullers, right?

9 A. I did not.

10 Q. Also in this letter to Mr. Cullers you write,
11 "I am not too familiar with how this process works. So,
12 please forgive me if I have omitted some information you
13 need." And by "process" here, you're referring to this
14 Rule 35 sentence reduction process, right?

15 A. Yes.

16 Q. But, in fact, you were very familiar with that
17 process by this time, right, because two months earlier,
18 you had testified in Moreno's hearing?

19 A. Yes.

20 Q. I'm going to show you Exhibit 130. Exhibit 130
21 is a handwritten thank you note from Michael Beckcom to
22 you dated October 30th, 2002. Do you see that?

23 A. I see it.

24 Q. Okay. Do you recall receiving this note from
25 Mr. Beckcom?

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1 A. Now that I've read it, I remember getting it.

2 Q. And he says in that letter, "I also appreciate
3 any further contact you may have with Mark Cullers that
4 might urge him to expediently file his motion on my
5 behalf." Do you see that?

6 A. I do.

7 Q. Okay. So, by "further contact," he knows that
8 you've already been in discussions with Mr. Cullers, as
9 we discussed previously, right?

10 A. Yes.

11 Q. Okay. And it sounds here like this motion is a
12 foregone conclusion, wouldn't you agree?

13 MS. MIRANDA: Objection, form.

14 Q. (BY MS. SCARDINO) He's -- he's not asking
15 Mr. Cullers -- or not appreciating any further contact
16 you have -- may have with Mr. Cullers that might
17 convince him to file a motion on my behalf, right?

18 A. That's not what the letter says, no.

19 Q. That's not what the letter says, right. What
20 it says was, "I appreciate any further contact you may
21 have with Mark Cullers that might urge him to
22 expediently file his motion on my behalf," right?

23 A. That's what it says.

24 Q. So, Mr. Beckcom knows as of October 30th,
25 2002 -- or believed as of October 30th, 2002 that

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1 Mr. Cullers was going to write that motion, right?

2 MS. MIRANDA: Objection, form.

3 A. Mr. Beckcom knew that I had told him after he
4 testified truthfully and completely that I would let
5 Mark Cullers, his AUSA, know that he had testified
6 truthfully and completely. Mr. Beckcom understood, just
7 like the jury was told, none of us had any control over
8 what his AUSA, Mark Cullers, or his federal judge would
9 do, if anything.

10 Q. (BY MS. SCARDINO) I'm going to show you
11 Exhibit 131. Exhibit 131 is a November 4th, 2002
12 letters -- letter from AUSA Cullers to you saying that
13 the U.S. did not have jurisdiction to confer any benefit
14 on Beckcom for his cooperation with the State of Texas.
15 Do you see that?

16 A. Let me read it.

17 I see it.

18 Q. Okay. Now, you could have left it at that,
19 right? You could have left it at that, your dealings
20 with Mr. Cullers concerning Mr. Beckcom's sentence?

21 A. Right.

22 Q. Because at this point, you've done what you
23 told the jury that you would do, right, you would write
24 a letter to Mr. Cullers, which you did, right?

25 A. There was, obviously, some confusion because

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1 Mr. Cullers never told me this part that's -- that's
2 addressed in the letter dated November 4th of '02. He
3 never told me that before, and I don't know that Michael
4 Beckcom knew that either.

5 Q. And so, you were under the assumption or under
6 the understanding going into that trial that he had
7 jurisdiction to do this Rule 35 agreement, right?

8 A. "He" being?

9 Q. Mr. Cullers.

10 A. I was.

11 Q. Okay. And you had conveyed that to Mr. Beckcom
12 as well, right?

13 A. I think Mr. Beckcom thought the same thing,
14 right.

15 Q. And he would -- only would have heard that from
16 you, right? He didn't have --

17 A. Oh, no. Mr. Beckcom knew what the law was. He
18 was well aware of all this.

19 Q. If you could just let me finish my -- my
20 question so we're not talking over each other.

21 But Mr. Beckcom would not have had
22 independent communications with Mr. Cullers now, would
23 he have?

24 A. He could have.

25 Q. You think that Mr. Beckcom might have been

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1 communicating with his federal prosecutor while he was
2 in prison?

3 A. He can write letters.

4 Q. So, it's your testimony that all the
5 information that Mr. Beckcom was getting regarding the
6 sentence -- the possible sentence reduction, he didn't
7 get it all from you?

8 A. You should ask Mr. Beckcom that.

9 Q. Let me show you Exhibit 132. Exhibit 132 is a
10 November 7th, 2002 fax from U.S. Attorney Mark McIntyre,
11 who was at the U.S. attorney's office here in the
12 Southern District of Texas. Do you see that?

13 A. I do.

14 Q. Do you know Mr. Mark McIntyre?

15 A. I do.

16 Q. And he was forwarding a Rule 35 motion that he
17 had filed in another case, right?

18 A. Yes.

19 Q. Okay. And he says, "Call me if you want me to
20 talk to the AUSA in Fresno." Do you see that?

21 A. I do.

22 Q. And by the AUSA in Fresno, he's referring to
23 Mark Cullers, right?

24 A. Is that where Cullers is? Yes.

25 Q. Yes. Okay. Did he reach out to Mr. Cullers

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1 for you?

2 A. I don't think so.

3 Q. He might have but you don't recall?

4 A. I don't think he did. This -- I just needed a
5 go-by, and Mark McIntyre used to work at the Harris
6 County DA's office and now he's with the feds still, and
7 I just needed a go-by, and that's why I asked him.

8 Q. And so, you consulted him to give you -- to
9 send you a go-by so you could help Mr. Cullers prepare
10 this Rule 35 motion?

11 A. Not Mr. Cullers, no. Mr. Cullers knows what
12 he's doing. I just didn't know the process.

13 Q. Well, why would you have needed a go-by if you
14 weren't preparing the Rule 35 motion?

15 A. I wanted to read the -- the rule on the
16 considerations and guidelines that a federal judge looks
17 into and his AUSA looks into before they ever move
18 forward to see if I'm answering their questions.

19 Q. And on November 12th, 2002, you left
20 Mr. Cullers a phone message, Exhibit 133. Do you see
21 it -- it -- you reference a phone call that you made to
22 him on November 12th?

23 A. I see that.

24 Q. Okay. And what did you tell Mr. Cullers in
25 that phone call?

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1 A. Well, can I read the letter first?

2 Q. Sure.

3 A. Okay.

4 Q. Okay. Do you recall what you said to Mr. --
5 Mr. Cullers in that phone message on November 12th,
6 2002?

7 A. No.

8 Q. Mr. Cullers called you back and left a message
9 for you on November 12th, 2002. Do you recall that
10 message? Probably not. It's been 15 years.

11 A. I thought it was the other way around.

12 Q. It was. You called -- it looks like you called
13 him from that letter and now he called you and left you
14 a message, which was produced by the DA's office.

15 A. Okay.

16 Q. Okay. And I'll play that message for you now.
17 This is just an audio recording.

18 (Audio recording played.)

19 Q. (BY MS. SCARDINO) Do you recall receiving that
20 message from Mr. Cullers?

21 A. Vaguely.

22 Q. Okay. It sounded like there was a
23 misunderstanding between the two of you. Do you agree?

24 A. Yes.

25 Q. And he says in that -- in that message -- and

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1 he was responding to your message on November 12th,
2 2002, right?

3 A. Yes.

4 Q. And he says in the beginning of that message,
5 "If Mike testified in your case with the expectation of
6 some deal from us, that would probably have to be
7 disclosed -- disclosed to the defense in your case," end
8 quote. You heard that?

9 A. I heard that.

10 Q. Okay. Did you tell Mr. Cullers in that
11 November 12th, 2002 message that you left for him that
12 Mike had testified in this case with the expectation of
13 some deal?

14 A. No.

15 Q. Okay. I'm going to show you Exhibit 133.

16 MS. MIRANDA: I think you have that one
17 right in front of us.

18 MS. SCARDINO: Oh, we do?

19 MS. MIRANDA: Yeah. That's the one we were
20 just looking at, right?

21 MS. SCARDINO: Yes. Oh, sorry.

22 Q. (BY MS. SCARDINO) Okay. And in that letter,
23 Exhibit 133, you beg Mr. Cullers to reconsider based on
24 the, quote, vital role that Beckcom played in obtaining
25 a conviction of Prible, right?

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1 A. I disagree with the word "beg," and the letter
2 speaks for itself.

3 Q. Okay. Do you agree that Mr. Beckcom was the
4 star witness in your case against Mr. Prible?

5 A. No.

6 Q. But he did play a vital role?

7 A. No. He played a role.

8 Q. So, you disagree with the statement "a vital
9 role" that you said in this -- in this letter that you
10 wrote to Mr. Cullers?

11 A. Michael Beckcom played a role.

12 Q. I'm going to show you Exhibit 135. This is a
13 November 15th, 2002 E-mail from you to Mr. Cullers
14 regarding Beckcom's attorney. Do you see that?

15 A. I do.

16 Q. And you're giving -- you're providing
17 Mr. Cullers with Beckcom's attorney's name and contact
18 information, right?

19 A. Yes.

20 Q. Okay. And eventually, Mr. Cullers did decide
21 to -- to write that Rule 35 motion for Mr. Beckcom,
22 right?

23 A. I don't remember.

24 Q. You don't recall if Mr. Beckcom got any time
25 off --

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1 A. I do not. What is the end of the story? I
2 don't know.

3 Q. Well, I'm ask --

4 A. I don't know.

5 Q. I mean, I'm asking you because you were at the
6 story.

7 A. And I don't remember.

8 Q. So, you -- you're saying after you -- this last
9 correspondence that I showed you with Mr. Cullers, you
10 didn't have any follow up with him about what the
11 sentence reduction would be?

12 A. I don't remember if I did because I don't know
13 if there was a sentence reduction.

14 Q. Other than this correspondence that you had
15 with Mr. Cullers regarding that Rule 35 motion for
16 Mr. Beckcom, did you do any other favors for
17 Mr. Beckcom?

18 MR. DOYLE: Objection.

19 A. Well, I wouldn't characterize that as a favor
20 either.

21 Q. (BY MS. SCARDINO) Did you give Mr. Beckcom any
22 benefits other than corresponding with Mr. Cullers about
23 his testimony in Mr. Prible's case?

24 MR. DOYLE: Objection.

25 A. I don't understand the word "benefits."

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1 Q. (BY MS. SCARDINO) Okay. Well, I'll show you
2 Exhibit 128 -- oh, Exhibit 136. Exhibit 136 is a
3 printout from the case summary of Beckcom's state case,
4 the capital murder case.

5 MS. MIRANDA: Do you have another copy?

6 MS. SCARDINO: Yeah.

7 MS. MIRANDA: Thanks.

8 Q. (BY MS. SCARDINO) And if you look on Page 2,
9 it says July 20th, 2000, the third entry?

10 A. July 20th, 2000?

11 Q. 2000. The third entry.

12 A. Okay.

13 Q. And it says that he's being sentenced for
14 murder, intentionally causing death and that that
15 sentence was to run consecutive with his prior sentence.
16 Do you see that?

17 A. I see that.

18 Q. Okay. And then if you look at Mr. Beckcom's
19 trial testimony on Page 9 --

20 MS. SCARDINO: Tina, do you have a copy of
21 Mr. Beckcom's trial testimony?

22 MS. MIRANDA: Oh, I'm sorry.

23 MS. SCARDINO: No, that's okay.

24 Q. (BY MS. SCARDINO) If you start on Page 9, line
25 2, you're questioning Mr. Beckcom in Mr. Prible's trial,

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1 and your question is, "What did you receive as part of
2 your plea bargain agreement on the state case, the state
3 murder case out of Aransas County?"

4 Answer, "Five years."

5 Question, "And a thousand dollar fine?"

6 Answer, "Correct."

7 Question, "And how about out of the federal
8 case?"

9 Answer, "135 months."

10 Question, "Which is the equivalent of about
11 how many years?"

12 Answer, "11 years, 3 months."

13 Question, "And is that what you're
14 currently incarcerated for?"

15 Answer, "Yes, it is."

16 Question, "So, tell the jury how long
17 you've been in prison for that federal offense now."

18 Answer, "Going on five years now."

19 Question, "And when is your expected
20 release date?"

21 Answer, "The earliest is around the end of
22 2006."

23 Question, "So, you have about how many
24 years left?"

25 Answer, "Four."

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1 Question, "As it stands right now?"

2 Answer, "Correct."

3 Question, "How did your sentence run? Did
4 they run concurrently or consecutively, your state 5
5 years and your federal 135 months?"

6 The answer, "State is running concurrent
7 with the federal."

8 And -- do you see that?

9 A. I do.

10 Q. And so, my question to you is do you know how
11 Mr. Beckcom's sentence went from running consecutively
12 with his federal case to running concurrently with his
13 federal case?

14 A. I would need to see his judgment and sentence
15 from federal court.

16 Q. Well, I'm just asking you if you had any
17 role --

18 A. Oh, no.

19 Q. -- in having that sentence changed to run
20 concurrently?

21 A. No.

22 Q. Okay. I'm going to show you Exhibit 170, which
23 we've looked at before. It's Michael Beckcom's phone
24 records, and I'll tell you exactly where to go. If you
25 go to Bates label number 63 down at the bottom.

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1 THE WITNESS: Which one is that?

2 Q. (BY MS. SCARDINO) Are you on 63?

3 A. Okay.

4 Q. Okay. If you go to date April 17th, 2002 --

5 A. Okay.

6 Q. -- you'll see that Beckcom called the DA's
7 office Special Crimes phone number on that date?

8 A. I see that.

9 Q. Okay. So, that was April 17th, 2002 he's
10 trying to reach out to you?

11 A. Not necessarily.

12 Q. Not necessarily? Might he have been reaching
13 out to someone else in the DA's office for some reason?

14 A. You should ask him that.

15 Q. Well, I'll ask you did you -- were you aware of
16 any other prosecutor that he was working on cases with
17 at this time in the DA's office?

18 A. I wasn't.

19 Q. You weren't. Okay. Exhibit 137. Exhibit 137
20 is Beckcom's parole application, and it's dated April
21 19th, 2002. Do you see that?

22 A. Should I have seen this before?

23 Q. I'm asking you -- well, I'm asking you if you
24 see this -- obviously --

25 A. I've never seen this before.

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1 Q. You've never seen this before?

2 A. I don't think so.

3 Q. So, you didn't fill this out for Mr. Beckcom?

4 A. What?

5 Q. I'm asking you did you fill it out for
6 Mr. Beckcom?

7 A. What is it?

8 Q. It's his application for parole in the state
9 case.

10 A. You're asking me if I filled this out?

11 Q. I am. I'm just asking if you filled it out for
12 him?

13 A. No.

14 Q. Okay. Did you have any role in assisting him
15 in applying for parole in his state case in April of
16 2002?

17 A. No.

18 Q. If you go back to Page 170 -- or Exhibit 170,
19 the same page we were looking at, 63.

20 A. Same page?

21 Q. Uh-huh. On April 24th, 2002, Beckcom again
22 reaches -- or calls the Special Crimes unit. Do you see
23 that?

24 A. Not yet. What day?

25 Q. April 24th, 2002.

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1 A. Okay.

2 Q. And then Exhibit 186 --

3 A. That was a 2 minute call.

4 Q. Yes, I see that. And my question to you --

5 A. That doesn't mean he talked to anybody.

6 Q. My question to you was he called the phone
7 number at the DA's Special Crimes unit on that date,
8 right?

9 A. He did.

10 Q. Okay. So, on April 17th, 2002, he called that
11 number, correct?

12 A. That's the one we did a while ago?

13 Q. Yes.

14 A. Yes.

15 Q. And on April 19th, he signed -- or filled out a
16 parole application or someone filled out a parole
17 application and dated it April 19th, 2002, right?

18 A. I have no idea who did that.

19 Q. Well, you'll agree that that Exhibit 137 is
20 dated 2000 -- April --

21 A. I don't know where --

22 Q. -- 19th, 2002?

23 A. I don't know where you got that from. I've
24 never seen that before. You can ask someone who has
25 information about that to verify it. I can't.

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1 Q. Okay. I'm just asking if the date on that is
2 April 19th, 2002. Do you see that at the bottom?

3 A. I don't know anything about that. I'm not
4 going to answer anything about it.

5 Q. Okay. And in Exhibit 170, we see that Beckcom
6 again called that number at Special Crimes a few days
7 later on April 24th, 2002, right?

8 A. And it looks like he again didn't speak to
9 anybody. It's a 2 minute call.

10 Q. You have no recollection, sitting here 15 years
11 later, as to whether or not he spoke with anyone on that
12 date, do you?

13 A. I have enough sense to know that not much could
14 get done in a 2 minute phone call after he went through
15 2 receptions, if not 3.

16 Q. Right. So, if he had spoken with you, it would
17 have been because you had called him on a unit manager's
18 phone to return his call, right?

19 A. No. No, not at all.

20 Q. I'm going to show you Exhibit 186. It's not
21 186. One second.

22 MR. RYTTING: Ask how much time we've got
23 left.

24 MS. SCARDINO: Yeah. How much time have we
25 been going?

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1 THE VIDEOGRAPHER: We've been going for 5
2 hours and 19 minutes.

3 MS. SCARDINO: Okay.

4 Q. (BY MS. SCARDINO) We're going to have to go
5 back to that exhibit.

6 Do you know if Mr. Beckcom was, in fact,
7 granted parole in his state case in 2002?

8 A. I do not know.

9 Q. Okay. Aside from writing that letter to
10 Mr. Foreman's prosecutor for the Herrero case --

11 A. Mr. Foreman?

12 Q. Mr. Foreman's prosecutor, right. We discussed
13 that earlier.

14 A. Okay.

15 Q. The letter to Ms. Batson. Did you do anything
16 else in the way of a benefit for Mr. Foreman as a result
17 of his assistance in either the Prible or the Herrero
18 cases?

19 A. The letter having to do with getting them all
20 separated.

21 Q. Okay. Did you have any charges against him
22 dropped?

23 A. Not that I remember.

24 Q. That would have been -- needed to have been
25 revealed, right?

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1 A. Yes -- no, he didn't testify for anybody ever.

2 Q. So -- so, because he didn't testify, in -- in
3 your mind, you didn't need to reveal the fact that you
4 had written a letter for him?

5 A. Not in the Prible case, no. He had nothing to
6 do with the Prible case, Nathan Foreman.

7 Q. I'll show Exhibit 116. Exhibit 116 was the
8 Brady motion filed by Prible's counsel pretrial. Do you
9 see that?

10 A. Yes.

11 Q. Okay. Now, the defense wasn't required to file
12 this motion, right? All this information -- Brady
13 information should have been revealed by this time,
14 right?

15 A. Correct.

16 Q. Okay. It's the state's burden to produce that
17 information, right?

18 A. Correct.

19 Q. Okay. On Section 2, 1B, and I know it's
20 difficult to read because of your notes, but you'll see
21 it says one of the things they asked you to reveal -- to
22 disclose was the date, place and manner of the state's
23 contacts with this witness, meaning Michael Beckcom,
24 including a statement of how contact was first initiated
25 and with whom it was made. Do you see that?

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1 A. I see that.

2 Q. And did you tell defense counsel that contact
3 was actually first made with Nathan Foreman, Beckcom's
4 cellmate?

5 A. I don't believe that was the case.

6 Q. You don't believe that you spoke with
7 Mr. Foreman before you spoke with Mr. Beckcom?

8 A. That's not what you asked me.

9 Q. I believe it is what I asked you but I'll --
10 I'll rephrase it.

11 Did you tell the defense that contact was
12 actually first made with Nathan Foreman, Beckcom's
13 cellmate?

14 A. I read this to be contact that Beckcom first
15 made with me.

16 Q. That's right. So, did you -- okay. Did you
17 reveal to the defense that you had spoken with
18 Mr. Foreman back in August 8th, 2001, he was -- he was
19 Mr. Beckcom's cellmate?

20 A. He wasn't his cellmate. He wasn't his cellmate
21 then.

22 Q. When did he become his cellmate?

23 A. I don't know.

24 Q. How did you --

25 A. Because in the transcript you just showed me,

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1 Beckcom told you he became his cellmate later, another
2 misstatement in your petition. He wasn't his cellmate
3 then.

4 Q. Okay. I thought you said earlier you didn't
5 know that they were ever cellmates?

6 A. I didn't. I just read it a while ago when I
7 looked at Tina's transcript from Beckcom's testimony,
8 and that reminded me of what Beckcom said back then.

9 Q. Okay. But eventually, he became Beckcom's
10 cellmate prior to this trial, right?

11 A. No, I don't know if it was prior to the trial.
12 I don't know when it happened.

13 Q. Okay. Number 1C in that exhibit, it asks for a
14 list of all cases in which Beckcom has appeared as a
15 witness, been listed as a witness or volunteered to
16 appear as a witness. Did you disclose any other cases
17 in which Mr. Beckcom was a witness for you in response
18 to this motion?

19 A. A witness for me?

20 Q. Yes.

21 A. There was only the one.

22 Q. He wasn't a witness for you in any other case
23 that you prosecuted?

24 A. No.

25 Q. I'm going to show you Exhibit 145. This is a

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1 probable cause affidavit in the case of Danny Bible.

2 That was a case you prosecuted, right?

3 A. It was.

4 Q. And if you look at the next -- actually, the
5 third page of this printout, under active parties, it
6 says, "Michael Beckcom, connection, previous bench
7 warrant, witness for the prosecution." Do you see that?

8 A. Where is it? No. Show me. I can't -- I just
9 can't read it.

10 Q. Third -- third line down, "Beckcom, Michael,
11 connection to Mr. Bible's case" --

12 A. Okay.

13 Q. -- "previous bench warrant, witness for the
14 prosecution."

15 A. What's your question?

16 Q. So, he was a witness for you in Mr. Bible's
17 case --

18 A. He was not.

19 Q. -- as well?

20 A. He was not.

21 Q. He wasn't a testifying witness maybe but you
22 had spoken with Mr. Bible's case?

23 A. No, ma'am. He -- he was bench warranted and
24 connected to that case when he was brought back so
25 Jeffrey Prible wouldn't know that he was brought back

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1 for Jeffrey Prible's case.

2 Q. So, you put a different name on the bench
3 warrant?

4 A. That could be the explanation for it.

5 Q. Okay. Now, going back through that Exhibit
6 170, I believe it was, the motion. When E says to
7 disclose agreements made with Beckcom concerning
8 benefits he would receive in exchange for testimony --

9 A. Wait. Are you on 170 or --

10 Q. I'm sorry. I believe it's 170.

11 A. 116 you mean?

12 Q. Hold on. I'm sorry. Is it 1 -- yes, 116. 1E.

13 A. 1E?

14 Q. Uh-huh. They are asking you to disclose
15 agreements made with Beckcom concerning benefits he
16 would receive in exchange for testimony, including --

17 A. Just a minute. You have to show me. I can't
18 find it fast enough.

19 Q. Here.

20 A. Okay.

21 Q. Section E, "Agreements made with Beckcom
22 concerning benefits he would receive in exchange for
23 testimony, including oral agreements." Do you see that?

24 A. Yes.

25 Q. Now, in response to that motion, did you reveal

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1 to defense -- the defense counsel for Mr. Prible that
2 you had arranged a meeting with Mr. Beckcom and Mr. Davi
3 at Mr. Beckcom's request?

4 A. No. That's not what happened.

5 Q. That's not what happened?

6 A. No. I don't remember arranging a meeting with
7 Mr. Davi. I don't remember Mr. Davi.

8 Q. Okay. Ms. Siegler, in the Temple trial, you
9 testified that you deleted all your E-mails while at the
10 DA's office; is that correct?

11 A. I think I testified that when I was done
12 working on a given E-mail and the to-dos were done, I
13 deleted it.

14 Q. And you also deleted -- did you also delete all
15 the E-mails a second time from your trash folder?

16 A. Yes.

17 Q. Okay. And you also deleted all E-mails that
18 you sent from your account, right?

19 A. Well, I don't know about that. I just didn't
20 want them in my in box where I had to look at them.

21 Q. I'm going to show you Exhibit 154. Do you have
22 Exhibit 154-1 still? That's the manual.

23 A. 154-1, back to the manual?

24 Q. Uh-huh.

25 A. Here's yours back.

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1 Q. Thank you.

2 A. Okay. Here it is.

3 Q. Okay. Exhibit 154-1, Section 2.61, and it
4 states, "Computer hardware and software is provided to
5 staff members to carry out the duties of the office.
6 The Attorney General of Texas has held that electronic
7 mail is public information under the Texas Open Records
8 Act." Do you see that?

9 A. Is that the first paragraph?

10 Q. Paragraph 2.61.

11 A. The first paragraph?

12 Q. If I can see it. Yes. It begins with the
13 first paragraph.

14 A. I don't see it in the first paragraph, what you
15 just read.

16 Q. Okay.

17 MS. MIRANDA: I think it's the first and
18 the fourth.

19 Q. (BY MS. SCARDINO) And the fourth. Okay. So,
20 "Computer hardware and software is provided to staff
21 members to carry out the duties of the office." Do you
22 see first sentence of Section 2.61?

23 A. I see that, yes.

24 Q. Okay. And then if you go down to the fourth
25 paragraph.

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1 MS. MIRANDA: Fourth paragraph.

2 Q. (BY MS. SCARDINO) And it says, "The Attorney
3 General of Texas has held that electronic mail is public
4 information under the Texas Open Records Act." Do you
5 see that?

6 A. I do.

7 Q. So, you had a duty to preserve your E-mails on
8 your DA account, didn't you?

9 A. I assumed the office was doing that.

10 Q. So, you assumed even though you personally were
11 deleting them, that the office was saving them?

12 A. Yeah. They had everybody's E-mails.

13 Q. And where -- and they would be somewhere at the
14 DA's office?

15 A. On the server.

16 Q. I'll show you Exhibit 110. This is a privilege
17 log from the DA's office to me dated September 21st,
18 2016. And it's, obviously, very lengthy, so, I won't
19 make you read it, but I'll represent to you that we
20 subpoenaed your E-mails and that a search for E-mails
21 related to this case, in all of the results that came
22 up, I believe there's only one from your account.

23 MS. MIRANDA: Do you have one more copy of
24 that?

25 MS. SCARDINO: Yeah.

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1 Q. (BY MS. SCARDINO) So, my question to you is if
2 they do have them at the DA's office, how do we find
3 those E-mails? Because the DA's office could not find
4 them. So, I'm asking you where were they stored, to
5 your knowledge?

6 A. Well, first of all, I don't know that there
7 would be any more. I don't know why I would have
8 E-mails specifically dealing with Prible. I'm trying to
9 think of why I would. Because back then, we did not
10 E-mail lawyers like they do today. We didn't.

11 Q. In 2001?

12 A. Yeah.

13 Q. Well, in the Temple case, there were E-mails
14 but you testified that you deleted your E-mails, right?
15 There are other E-mails from others, right?

16 A. Right.

17 Q. And in this case, there are a lot of E-mails
18 from other people but none from you, right? So, other
19 lawyers in the office were using E-mail at that time?

20 A. I meant defense lawyers, sorry, between
21 prosecutors and defense lawyers.

22 Q. I'm talking any E-mails that you sent or
23 received about this case --

24 A. Okay.

25 Q. -- where would they be located if you deleted

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1 them? Where could we find them?

2 A. The DA's office would have them. If there were
3 any more, they would have them. They would be here.
4 There must not be any more. That doesn't surprise me.

5 MS. SCARDINO: How much time do we have?

6 THE VIDEOGRAPHER: We have 5 hours and 35
7 minutes.

8 MS. SCARDINO: Okay. If we can take a
9 5-minute break, I think I can finish -- get exactly what
10 I need to do and then hand it over to James.

11 THE VIDEOGRAPHER: The time is 4:41. We're
12 off the record.

13 (Short recess.)

14 THE VIDEOGRAPHER: This is the beginning of
15 file 9. The time is 4:51. We are on the record.

16 Q. (BY MS. SCARDINO) Ms. Siegler, at Mr. Prible's
17 trial, your coincidental contact theory between
18 Mr. Beckcom and Mr. -- Mr. Prible was very important to
19 your case, would you agree?

20 MS. MIRANDA: Objection, form.

21 A. Say that again.

22 Q. (BY MS. SCARDINO) Your theory at trial was
23 that Mr. Beckcom and Mr. Prible came into contact
24 coincidentally at FCI Beaumont, right?

25 MR. DOYLE: Objection.

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1 A. I don't remember exactly what I said about
2 that.

3 Q. (BY MS. SCARDINO) Okay.

4 THE VIDEOGRAPHER: Ms. Scardino,
5 microphone.

6 MS. SCARDINO: I'm sorry?

7 THE VIDEOGRAPHER: Microphone.

8 MR. RYTTING: Your mic.

9 MS. SCARDINO: Sorry. Yes.

10 Q. (BY MS. SCARDINO) I'm going to show you your
11 opening statement.

12 A. Okay.

13 Q. An excerpt that's Exhibit 195. Page 78, line
14 21, and it said -- and -- and you say, "You're also
15 going to hear testimony from a man named Michael Glen
16 Beckcom. Michael Beckcom is a federal inmate at the
17 Beaumont medium federal penitentiary. He's going to
18 tell you about how he came to meet and know Jeff
19 Prible." Do you see that?

20 A. I do.

21 Q. Okay. So, it was important at trial to portray
22 the meeting of Mr. Prible and Mr. Beckcom as
23 coincidental, right?

24 A. Not really.

25 Q. Okay.

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1 A. I didn't say that anywhere.

2 Q. Okay. So, you'll disagree that that was your
3 theory at trial?

4 A. That's not what you just read to me that I said
5 anything about contact.

6 Q. Well, in your opening statement, you tell the
7 jury that Michael Beckcom is going to tell them how he
8 came in contact with Mr. Prible, right?

9 A. Yes.

10 Q. And so, because you put that in your opening
11 statement, that initial contact is pretty important,
12 right?

13 MR. DOYLE: Objection.

14 A. Not necessarily.

15 Q. (BY MS. SCARDINO) Okay. And Mr. Beckcom
16 testified at trial that the confession that he
17 received -- that he heard from Mr. Prible was heard in
18 the presence of Nathan Foreman as well. Do you remember
19 that at the trial?

20 A. I do not remember the specifics of the trial.

21 Q. Okay.

22 A. It was 15 years ago.

23 Q. Okay. I'm going to show you your -- an excerpt
24 from your closing statement, and I'll -- I'll read it
25 and then I'll give it to you if that's okay. Page 75,

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1 line 11, this is from your closing argument, "Is there
2 any evidence in this trial that Michael Beckcom got any
3 facts about what happened anywhere except out of the
4 mouth of this defendant? All of Mr. Gaiser and
5 Mr. Wentz's questions and hypotheticals and hopes and
6 desires in the whole wide world do not amount to a hill
7 of beans because there ain't no evidence that Michael
8 Beckcom ever had anybody anywhere, any paper, any
9 newspaper, any cop, any TV show tell him anything about
10 the facts of this case for Jeff Prible." Do you
11 remember saying that?

12 A. I do.

13 Q. Okay. So, not only was the theory at trial
14 that Mr. Beckcom met Mr. Prible coincidentally at FCI
15 Beaumont but it was also --

16 MR. DOYLE: Object -- objection,
17 mischaracterizes.

18 Q. (BY MS. SCARDINO) -- but it was also --

19 MS. SCARDINO: If you could just let me
20 finish the question first and then state your objection.

21 MR. DOYLE: Okay. But I mean, you've
22 already done it once.

23 MS. SCARDINO: Okay.

24 MR. DOYLE: Come on.

25 Q. (BY MS. SCARDINO) And then your -- your

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1 theory -- you also had another theory, which was that
2 everything that Mr. Beckcom learned about Mr. Prible's
3 case, he learned from the mouth of -- mouth of
4 Mr. Prible, right?

5 A. That was two questions.

6 Q. Okay. Let me restate.

7 Your theory of the case was that everything
8 Mr. Beckcom learned from Mr. -- about Mr. Prible's case,
9 he learned from the mouth of Mr. Prible, right?

10 A. Yes.

11 Q. Okay. That was your theory. Okay. You never
12 mentioned this August 8th, 2001 initial contact that you
13 had had with Mr. Foreman about Mr. Prible's case to this
14 jury, did you?

15 A. That was out of the mouth of Nathan Foreman,
16 who wasn't credible.

17 Q. Okay.

18 MS. SCARDINO: Objection, nonresponsive.

19 Q. (BY MS. SCARDINO) This is a yes or no
20 question. Did you tell the jury in your argument that
21 you had initially met with Mr. Foreman on August 8th,
22 2001 to discuss Mr. Prible's case? Did you?

23 A. In my opening statement, I did not.

24 Q. At any time during trial?

25 A. No.

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1 Q. Okay. Let me show you Exhibit 109-4.
2 Actually, I want to get you actually to read Exhibits
3 109-2, 109-3 and 109-4 into the record because they're
4 your work product notes, I believe.

5 A. Whoa.

6 MS. MIRANDA: Can I have a copy?

7 MS. SCARDINO: Yeah.

8 A. Where is the first page?

9 MR. DOYLE: Is that an extra one or did you
10 already --

11 Q. (BY MS. SCARDINO) The first page of what?

12 A. What is this?

13 Q. This was produced by order of the Court after
14 the Court's in camera review of your work product in
15 this case.

16 A. But this just starts with something. What is
17 the -- what does this go to?

18 Q. I wish I knew. I would like to know that as
19 well but I don't. This was what was produced.

20 A. From the Prible file?

21 Q. Yes. And if you could read it into the record.

22 A. Okay.

23 Q. Appreciate it.

24 A. The first line on 109-2 -- that's a 109, right?

25 Q. Uh-huh.

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1 A. -- says, "45 semiautomatic? Possible," and
2 then it is X'd out. The next says a check mark in front
3 of "Live 40 caliber rounds?" That -- that note usually
4 means "no" or "done with" when I write it like that.

5 Q. Okay.

6 A. The next line is a check mark in front of,
7 "Weapon at CC for repair question?" CC? I don't know
8 what that is. "Not for repair. Lie by defendant."

9 The next line has an arrow pointing to,
10 "Shorts/shorts/towel results? Not blood, flammable?"
11 And there's a box there that I didn't answer. "Send to
12 FBI."

13 The next line says, "Pull old files," and
14 there's a cause number "9917797." There's a cause
15 number "811397." And there's a cause number "9719252."

16 The next line is a question mark, "Can we
17 prove bank robberies? (Motive)" Underneath that it
18 says, "Out December, 2000" -- I can't tell if that's
19 "2003" or "2023." "Defendant in fed pen for bank
20 robbery, 5 of them." "65 months," circled.

21 The next line says, "Does Jamie Lyons ID
22 Prible?" And underneath that, in somebody else's
23 writing, it says, "Preg girlfriend." That's not my
24 writing.

25 The next line says question mark, either

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1 "re" or "red Dodge Ram pickup, license plate number
2 SF4896? Nilda's dad."

3 Q. And then if -- if I can -- if I can stop you
4 right there --

5 A. Okay.

6 Q. -- and move on to the next page.

7 A. Okay.

8 Q. And I want to bring your attention to the
9 middle of that page, a little -- and it says, "Defendant
10 in Beaumont pen." Do you see that?

11 A. I see a defendant -- yes, "Defendant in
12 Beaumont pen."

13 Q. And so, this -- these notes look like they were
14 taken before Mr. Prible was charged, do you agree?

15 A. Yes, these look like some initial to-dos or
16 random thoughts I had.

17 Q. Okay. And if you look at the following page,
18 if you look in the middle of the paragraph, it says,
19 "Potential federal prison roommate." Do you see that?

20 A. I do.

21 Q. Okay. So, before you were -- you had accepted
22 charges against Mr. Prible, you were already
23 contemplating setting him up with a federal prison
24 roommate; is that correct?

25 A. No. That's not what that means.

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1 Q. The jury wouldn't have believed that
2 coincidental contact theory if they had known that you
3 had thought about putting him with a federal prison
4 roommate before you even charged him, right?

5 MR. DOYLE: Objection.

6 A. That's not what that means. Do you want to
7 know what it means?

8 Q. (BY MS. SCARDINO) Another theory that you had
9 at the trial was this theory that DNA disappears
10 immediately once it's in an oral cavity; is that
11 correct? Do you remember that?

12 A. I don't remember exactly what we said, no.

13 Q. Okay. Well, the reason this -- this theory was
14 important was because the most damning piece of evidence
15 against Mr. Prible was the DNA -- his DNA found in the
16 victim's mouth. Do you remember that?

17 A. I do.

18 Q. Okay. And so, it was crucial that the
19 prosecution refute Mr. Prible's story of consensual sex,
20 which is what he told -- volunteered to the detectives
21 within hours of the murders, right?

22 A. I don't remember what he said initially.

23 Q. Okay. Okay. But you agree that this theory
24 about the semen disappear -- or DNA disappearing
25 immediately was something that was important to the

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1 trial?

2 MR. DOYLE: Object.

3 A. I don't know that we ever used the word
4 "disappear immediately."

5 Q. (BY MS. SCARDINO) Okay. I'm going to show you
6 your opening statement again, Page (sic) 195. Do you
7 have it in front of you?

8 A. Yes.

9 Q. Okay.

10 A. It's the yellow one. Do you need it?

11 Q. No. I think those are all -- thank you. Look
12 at Page 82, line 18.

13 A. Okay.

14 Q. Okay. And I'll read it for you while you're
15 reading along. "The evidence will tell you -- the
16 compelling evidence will tell you that the reason for
17 that is that found -- after the autopsies were done,
18 especially the autopsy on Nilda Tirado, found in her
19 mouth was the semen, the DNA of Ronald Prible. And the
20 DNA expert will tell you what the odds are, what that
21 means exactly statistically the fact that his DNA is
22 found in her mouth. But the most compelling thing he's
23 going to tell you is that you know what, when semen is
24 in somebody's mouth, in a lady's mouth, it goes away in
25 minutes. It goes away with a small swallow. That's

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1 what the evidence is about in this case, and you're
2 going to know from the testimony all about what kind of
3 man could ejaculate in a woman's mouth after he executed
4 her husband minutes before he executed her, minutes
5 before he could find gasoline to set her on fire and
6 what kind of a man could have walked out of the house
7 with it smoking and burning knowing three little babies
8 were asleep in their bed. That's this kind of man, and
9 he's guilty of capital murder."

10 Now, does this refresh your memory about
11 the theory of the prosecution being that DNA disappears
12 immediately once it is in a woman -- is in a victim's
13 mouth?

14 A. I did not use the words "disappear
15 immediately."

16 Q. Okay. "It goes away in minutes" is the words
17 you stated, right?

18 A. That's what I said.

19 Q. Okay. And that was also the testimony that you
20 elicited from the DNA expert in this case, Mr. Watson,
21 correct, that DNA -- the fact that he found any DNA in
22 Ms. -- in the victim's mouth -- or the fact that any DNA
23 was found in her mouth meant that the victim had been
24 executed immediately after the assailant had ejaculated;
25 is that correct?

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1 A. I don't think that he could testify to that
2 exactly but you'd have to show me his testimony.

3 Q. Okay. I'll show you Dr. Watson's testimony.
4 If you'll let me read it real quickly into the record
5 and then I'll show it to you.

6 Okay. Page 101 of Dr. Watson's -- Watson's
7 testimony, line 9, and this is Mr. Wisner --

8 A. Directing him.

9 Q. -- questioning Mr. -- yes. I believe I said it
10 was you earlier but this is Mr. Wisner.

11 He says, "And you haven't ever found one
12 partial male sperm cell on any of these swabs?" Talking
13 about oral swabs.

14 And Mr. Watson -- Dr. Watson says, "Well,
15 you know, I don't know if there were sperm cells there.
16 There was insufficient sperm to generate a profile."

17 Question, "Not even one?"

18 Answer, "Not that I can recall, no."

19 Question, "Yet in this case, we have a full
20 and complete male profile; is that right?"

21 Answer, "That's correct."

22 Question, "Based on your testing, could we
23 say that based on your experience and training, because
24 we have a full and complete male profile, that would be
25 inconsistent -- let me repeat -- inconsistent with the

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1 semen in this case being deposited in Nilda's mouth as
2 long as an hour before she was killed?"

3 Mr. Gaiser lodges an objection, which is
4 overruled.

5 Answer, "I would say that it is. I would
6 say that it's inconsistent."

7 Does that refresh your memory as to whether
8 testimony regarding the amount of time that semen could
9 remain in the victim's mouth was elicited from
10 Dr. Watson?

11 A. You used the phrase "disappeared immediately."
12 What I heard there was an hour.

13 Q. Okay. So, at the very least, you're saying
14 that the -- that it would have disappeared in an hour?

15 A. I don't know. Vic did the direct. I didn't.

16 Q. Okay.

17 A. It's been 15 years. The transcript speaks for
18 itself, and Vic is the one you should be asking that
19 question to.

20 Q. Well, the -- the transcript does speak for
21 itself, I agree, and earlier in your opening statement,
22 we -- we said that -- we showed where you said -- told
23 the jury that it disappeared within minutes, right?

24 A. I already don't remember. I'm sorry. Do you
25 want me to look again?

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1 Q. Okay. If you can look at Exhibit 109-4, at the
2 very top there in your handwriting, it says, "Pam
3 McInnis, semen lives up to 72 hours." Do you see that?

4 A. I do.

5 Q. Now, who is Pam McInnis?

6 A. She is a DNA analyst and was the head of the
7 crime lab for Pasadena --

8 Q. Okay.

9 A. -- and Harris County. She was connected to
10 both.

11 Q. And so, you consulted her about this question
12 as to how long semen could live in the oral cavity,
13 right?

14 A. I at least started with her, yes.

15 Q. Did you reveal to the defense counsel in
16 Mr. Prible's case that you spoke with Ms. McInnis and
17 that she told you that semen could live up to 72 hours?

18 A. I think that was part of the trial. 72 hours
19 is in the trial.

20 Q. My question to --

21 MS. SCARDINO: Objection, nonresponsive.

22 Q. (BY MS. SCARDINO) My question to you is did
23 you ever reveal to Mr. Prible's counsel that you had
24 spoken with Pam McInnis and she had told you that semen
25 lives up to 72 hours?

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1 A. I don't remember.

2 Q. Okay.

3 MS. SCARDINO: I think that is all I have
4 at this moment, if I could pass it on to James.

5 EXAMINATION

6 Q. (BY MR. RYTTING) Ms. Siegler, you mentioned
7 that you found Nathan Foreman not to be credible, that's
8 correct?

9 A. I did.

10 Q. And, in fact, you called him several times
11 during this deposition a liar?

12 A. I did. Can you talk a little louder?

13 Q. In fact, you called him -- several times during
14 this deposition, you referred to him as a liar?

15 A. I did.

16 Q. And on December 10th of 2001, you interviewed
17 Nathan Foreman, along with Johnny Bonds, at least that's
18 what the record indicates based on Johnny Bonds' notes?

19 MS. MIRANDA: Objection, form.

20 A. I don't remember that specifically but I'm not
21 going to argue with that.

22 Q. (BY MR. RYTTING) All right. Did you determine
23 Nathan Foreman was not credible because -- did that
24 have -- did that have anything to do with his race?

25 A. No.

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1 Q. Did it have anything to do with his appearance?

2 A. With his what?

3 Q. With his appearance.

4 A. No.

5 Q. Was it because his story just didn't hang
6 together or didn't fit the facts?

7 A. That was a lot of it.

8 Q. And that's why you didn't use him in -- and
9 we're talking about at any time, you can't recall at
10 least, that Nathan Foreman gave you a good account,
11 something that fit the facts?

12 A. You asked me two questions there.

13 Q. Yes. Well -- and so -- and I'm talking about
14 at any point you -- well strike the question. I don't
15 need it.

16 You mentioned you had Michael Beckcom bench
17 warranted in the Bible -- in the Danny Bible case?

18 A. No. I mentioned that Michael Beckcom was bench
19 warranted and attached to the Danny Paul Bible case.

20 Q. Okay. And how do you do that? What type of
21 documents do you have to file to do that?

22 A. The court -- court coordinators are in charge
23 of bench warrants.

24 Q. But you instruct the court coordinator why
25 they're being bench warranted --

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1 A. Yes.

2 Q. -- correct?

3 A. Yes.

4 Q. And then they file some sort of document with
5 the court?

6 A. I don't really know what they do. That's a
7 court coordinator function.

8 Q. But it comes out as a court order to move
9 somebody from one place to the courtroom or to the -- to
10 the jail, right?

11 A. It does.

12 Q. Okay. And you knew at the time that he was not
13 going to be a witness in the Danny Bible case?

14 A. That's correct.

15 Q. So, it was a false misrepresentation to the
16 Court and to the court coordinator?

17 A. No.

18 MR. DOYLE: Objection.

19 Q. (BY MR. RYTTING) What was true about that?

20 A. That we needed Michael Beckcom brought to
21 Harris County, and we needed to make sure that Jeffrey
22 Prible and Michael Beckcom did not run into each other
23 for lots of reasons, to protect the integrity of the
24 case and also for the safety purposes for both of them.

25 Q. Okay. And isn't there other means to do that

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1 without having bench warrants somebody as -- and attach
2 them as a witness to the case?

3 A. No. If I would have attached Michael Beckcom
4 to the Jeffrey Prible case, they would have been brought
5 together on the chain each and every time they were
6 brought up. That would have been really a stupid thing
7 to have happen.

8 Q. You can't have them bench warranted at
9 different times?

10 A. I did have them bench warranted at different
11 times. That's why it's connected to Danny Paul Bible.

12 Q. No, but in the Prible case.

13 A. No. They get -- it gets all messed up. The
14 jail can't keep it straight.

15 Q. So, this is a necessity that you attach them to
16 cases to which they're not involved, that a witness is
17 not involved?

18 MR. DOYLE: Objection. I'm not sure I
19 heard what you said, James.

20 Q. (BY MR. RYTTING) Okay. So -- well, strike
21 that.

22 And is this a common practice by Harris
23 County Texas district attorneys?

24 A. Yes.

25 Q. And so, the result is that when say someone

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1 gets a post conviction case and has to investigate it,
2 they're -- they look at cases and find -- and they
3 cannot be sure if a witness is attached for one reason
4 or another to a case because of the Harris County
5 district attorney's policy?

6 A. That would be a complication, yes.

7 Q. Let's see. And did you tell Mr. Wentz and
8 Mr. Gaiser about your -- the results of your interview
9 with Nathan Foreman?

10 MR. DOYLE: Objection, asked and answered.

11 A. I don't believe so, no.

12 Q. (BY MR. RYTTING) And Nathan Foreman,
13 obviously, didn't give you the same information as
14 Michael Beckcom did?

15 MS. MIRANDA: Objection, form.

16 A. You told the federal judge that the division of
17 duties were you were handling Mr. Herrero.

18 Q. (BY MR. RYTTING) I asked you a question,
19 Ms. Siegler.

20 A. Well, did you misrepresent that to the federal
21 judge? Because I thought you were doing Herrero and she
22 was doing Prible, and so far you haven't had a single
23 Herrero question.

24 Q. Look, you're not allowed to ask questions.
25 Just answer them.

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1 A. Just making a point. What's your question?

2 Q. And the question was -- well, strike that.
3 Strike the question. We'll move -- move on to some
4 matters about the -- to different matters.

5 What is your understanding of the role of
6 a -- and these are going to be -- going to concern with
7 the -- specifically the Herrero case. What is your
8 understanding -- what is your understanding of the role
9 of a prosecutor in opening -- opening argument? What --
10 what are the limits?

11 A. Ask me that again.

12 Q. What is the purpose -- what is the purpose of
13 an opening argument?

14 A. To give the jury a picture and an idea of what
15 we hope the evidence to be.

16 Q. And you have to have a good faith belief that
17 the evidence that you're going to present and will be
18 admitted in the case is evidence that you have based
19 your opening argument on and that you've told the jury
20 that you're going to show them; isn't that correct?

21 MR. DOYLE: Objection.

22 A. If you're asking me if I have to have a good
23 faith belief that the evidence will be admissible before
24 I talk about an opening statement, if that's your
25 question, then the answer is yes.

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1 MS. SCARDINO: Do you want to take a
2 2-minute break and run up and get --

3 MR. RYTTING: Yes.

4 MS. SCARDINO: Okay. Let's go off the
5 record real quickly for 2 minutes.

6 THE VIDEOGRAPHER: The time is 5:19. We're
7 off the record.

8 (Short recess.)

9 THE VIDEOGRAPHER: This is the beginning of
10 file 10. The time is 5:21. We are on the record.

11 MR. RYTTING: I'm not sure what exhibit
12 we're up to. Would it be safe to start at 300?

13 MS. SCARDINO: Yes. That's fine.

14 Q. (BY MR. RYTTING) I'm handing you --

15 MR. RYTTING: Here you go.

16 MR. DOYLE: Thank you.

17 Q. (BY MR. RYTTING) -- opening argument --

18 MR. RYTTING: Do you need a copy?

19 Q. (BY MR. RYTTING) -- opening argument in the --
20 in the Herrero case.

21 A. Okay.

22 Q. Okay. And on Page 4, you refer to
23 Mr. Herrero --

24 A. Page 4 but number 8?

25 Q. I mean Page 7. Page 7. On Page 7 of what's

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1 been marked as Exhibit 300, you refer to -- if you read
2 down, you refer to Mr. Herrero as much like a Godfather,
3 a John Ghatti type person.

4 A. What line are you talking about?

5 Q. The last line on Page 7, so, it would be line
6 25.

7 A. Ask me the question again.

8 Q. I'm just saying if you -- if you read here,
9 you -- you -- you state before the jury in your opening
10 argument that Mr. Herrero is the leader of the All
11 Houston Group, he's very proud, he wants people to look
12 up to him, he's sort of like a Godfather, a John Ghatti
13 type person, correct?

14 A. Yes.

15 MS. MIRANDA: Objection, scope.

16 Q. (BY MR. RYTTING) And you mentioned that you
17 had nothing to do with the Jason Morales case?

18 A. Are we still on this?

19 Q. No. I'm just asking a question.

20 A. Okay. What's the question?

21 Q. You said that you didn't prosecute Jason
22 Morales, that was someone else's case?

23 A. That's not what I said.

24 Q. What did you say?

25 A. I said I didn't prosecute the Cuellar case.

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1 Q. Cuellar?

2 A. Yes.

3 Q. But you did prosecute Jason Morales?

4 A. I did.

5 Q. Okay. And, in fact, Jesse Moreno was a witness
6 in that case?

7 A. He was.

8 Q. All right. Let me see here. All right. Okay.
9 And, again, like you said, you're supposed to have a
10 good faith basis in what you're informing the jury that
11 the evidence is going to show when you make an opening
12 remark, correct?

13 A. Yes.

14 Q. And if we look at Page 8, if we read -- at
15 the -- at the second full paragraph, I'll just read it
16 for the record starting on line 14.

17 "So, Jesse Moreno showed his papers to this
18 defendant. At first they were all in the All Houston.
19 Everything was going along fine until this defendant
20 discovered that Jesse Moreno had before, in fact,
21 testified for the authorities on two different
22 occasions. And when that happened, Jesse Moreno is
23 going to tell you what happened was he was put in what's
24 called the hole in the Beaumont prison where they
25 protect you even in prison from other inmates."

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1 And the -- your theory and the evidence in
2 the case showed, did it not, that -- or the testimony
3 from Mr. Moreno, that it was threats from Mr. Herrero
4 that drove Mr. -- that required protection for
5 Mr. Moreno; isn't that correct?

6 MS. MIRANDA: Objection, scope.

7 A. You asked me two different questions there.

8 Q. (BY MR. RYTTING) And -- and I'm just saying
9 this indicates -- that that -- this -- this paragraph
10 indicates that it was threats from Mr. Herrero that
11 was -- that was the reason why Jesse Moreno had to be
12 put into segregation?

13 A. And what's your question?

14 Q. Is that -- that was the -- that was your
15 theory, correct, in this case?

16 A. I'm still confused.

17 Q. I understand. Well, isn't it a coincidence
18 that -- you're not saying it's just a coincidence that
19 Jesse Moreno -- that the defendant discovered that Jesse
20 Moreno had before, in fact, testified for the
21 authorities and that what happened was that Jesse Moreno
22 was -- was -- was put in what's called the hole in the
23 Beaumont prison?

24 MS. MIRANDA: Objection, scope.

25 A. What's your question?

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1 Q. (BY MR. RYTTING) Are you saying that it's just
2 coincidence or are you saying that there was a --
3 that -- are -- are you telling the jury in your opening
4 argument that Jesse Moreno was put in the -- in the hole
5 because of threats from Mr. Herrero?

6 A. No.

7 Q. You're not? What does this mean?

8 A. Just what it says.

9 Q. Okay. So, it is just a -- just two random
10 unconnected events, one -- one event that Jesse --
11 that -- that Mr. Herrero learned about Mr. Moreno's
12 testimony from the authorities on two different
13 occasions, and the second is an unconnected event,
14 completely unconnected with that, is that what you're
15 telling me?

16 A. No.

17 Q. So, they are connected?

18 A. Yes.

19 Q. How?

20 MS. MIRANDA: Objection, scope. If I can
21 just really quickly -- no, I -- we talked about this
22 earlier --

23 MR. RYTTING: You make your objections.

24 MS. MIRANDA: I don't want to -- I don't
25 want to keep interrupting you, so, I just want to say

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1 for the record that I'm objecting to all things outside
2 of the scope so that I don't have to constantly keep
3 saying that.

4 MR. RYTTING: Oh, thanks.

5 MS. MIRANDA: I don't want to do that. So,
6 if I just --

7 MR. RYTTING: Thanks.

8 MR. DOYLE: Is that an agreement you all
9 have?

10 MS. MIRANDA: We -- we didn't make an
11 agreement but we -- we discussed what my objections
12 were, and I don't -- and --

13 MR. RYTTING: Nor is it any of your
14 business.

15 MS. MIRANDA: -- they -- they -- they asked
16 me to simply --

17 THE WITNESS: It's my business.

18 MS. MIRANDA: -- object when they asked a
19 question but --

20 MR. DOYLE: I think it has to do with my
21 witness, James. That's all I'm --

22 Q. (BY MR. RYTTING) So, these statements are
23 connected? What happened to Jesse Moreno is connected
24 to what the defendant discovered -- the defendants
25 discovered, that he had testified for the authorities,

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1 that's what you -- that's what this argument states,
2 correct?

3 A. It speaks for itself.

4 Q. Okay. And is that -- but tell me what -- is
5 that what the -- is that how it speaks for itself? Is
6 that a correct interpretation of what it says?

7 A. I don't know what you think it says.

8 Q. Okay.

9 A. I just believe it speaks for itself.

10 Q. I told you what I think it says. I think the
11 implication here is that the fact that Jesse Moreno --
12 that -- that Mr. Herrero discovered that Jesse Moreno
13 had, in fact, testified for the authorities resulted or
14 was the reason why Jesse Moreno was put in what's called
15 the hole. Is that a fair inference from this paragraph?

16 A. That's what it says.

17 Q. Okay. Thank you.

18 And he was put in the hole in something
19 like 2000?

20 A. When?

21 Q. In -- in July of 2000.

22 A. I don't remember that.

23 Q. You don't know?

24 A. (Witness indicated by shaking her head
25 negatively.)

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1 Q. But he was put in the hole before he contacted
2 you about this case; isn't that correct?

3 A. Yes.

4 Q. And, in fact, you told -- you said that one of
5 the reasons that Jesse Moreno came forward wasn't just
6 that he wanted a reward but out of desperation because
7 of threats from Mr. Herrero, right?

8 A. Did you say "reward"?

9 Q. A reward or assistance from you in getting a
10 Rule 35.

11 A. Do you want to reask the question and leave out
12 "reward"?

13 Q. Yeah. Sure. Sure. And you also tried to
14 inform -- told the jury that one of the reasons that
15 Jesse Moreno came -- came forward -- one of the reasons
16 that Jesse Moreno contacted you to offer to testify
17 against Mr. Herrero was out of fear and for protection.
18 Do you recall that?

19 A. I do.

20 Q. Okay. And it was from -- and it was protection
21 from whom?

22 A. Hermilio Herrero.

23 Q. And, in fact, you argued to the jury at least
24 that Mr. Herrero was risking his life by coming forward?

25 A. I did.

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1 Q. And that was one of the reasons that may make
2 him credible was he was willing to take that risk?

3 A. Yes.

4 Q. And risk his life, and the risk was the risk
5 that Mr. Herrero would use his power within the prison
6 system or outside to harm Mr. Moreno; isn't that
7 correct?

8 A. And/or his family.

9 Q. And/or his family. And you have read the
10 pleadings in this case, haven't you --

11 A. Say that again.

12 Q. -- that we have filed? Have you read the --
13 the habeas pleadings in this case and the exhibits?

14 A. Your petition?

15 Q. Yes, in the -- in the Herrero case.

16 A. When I first got it from Tina.

17 Q. Okay. All right.

18 MS. MIRANDA: Wait. I -- I'm sorry.

19 Q. (BY MR. RYTTING) All right. And did you ask
20 the BOP for any documents?

21 A. Did I?

22 Q. Yes.

23 A. No.

24 Q. Did you ask Mr. Moreno why he was -- when
25 you -- did you prepare Mr. Moreno for his testimony?

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1 A. In?

2 Q. In the Herrero case.

3 A. I did.

4 Q. Okay. And did you ask him why he was put in
5 what's called the -- what you're referring to as the
6 hole?

7 A. Yes.

8 Q. Okay. And he told you that it was because of
9 threats from Mr. Herrero; is that correct?

10 A. Yes.

11 Q. And do you know now that that's false?

12 A. I do not.

13 Q. And if the BOP record showed that Mr. Herrero
14 was put in the hole because he was -- partly because he
15 was running drugs into the prison for the Texas
16 syndicate, were you aware of that?

17 A. I heard that at some point through the
18 appellate process.

19 Q. Okay. And that Mr. Herrero was transferred to
20 Liberty County to keep him safe from other inmates
21 because he was assisting BOP investigating drug running
22 into the prison?

23 A. That's not what I understood or was told.

24 Q. So, you were -- you were not told that?

25 A. No.

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1 Q. You were never aware of that?

2 A. No.

3 Q. And -- and the basis for these BOP documents --
4 the source of this information from the BOP documents
5 is -- are interviews of Mr. Moreno, you're not aware of
6 that either, are you?

7 A. No.

8 Q. Okay. And, in fact, you're not aware either
9 that he mentioned Mr. Herrero in one of the documents --

10 A. Who is "he"?

11 Q. Sorry. Mr. Moreno mentioned Mr. Herrero in one
12 of the documents -- in one of the interviews that BOP
13 memorialized but did not say that Mr. Herrero was
14 threatening him?

15 A. How would I know that?

16 Q. Okay. You did not know that, right?

17 A. (Witness indicated by shaking her head
18 negatively.)

19 Q. And if all that is true, you realize that your
20 attorney -- I mean, your -- your witness not only
21 provided you false information but led you to make a
22 false representation to the jury?

23 MS. MIRANDA: Objection, form.

24 MR. DOYLE: Objection.

25 A. If that is true.

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1 Q. (BY MR. RYTTING) Thank you.

2 A. I thought we were here today on Prible.

3 Q. You're here to answer questions.

4 A. My subpoena says Ronald Jeffrey Prible.

5 Q. Yeah. You're here to answer questions in the
6 case, and I -- I mean, you realize -- you have read both
7 those petitions, correct?

8 A. No. What do you mean both petitions?

9 Q. One -- the -- the application, Herrero
10 application, have you read that?

11 A. No.

12 MR. DOYLE: No. As a matter of fact, I
13 understood that was not --

14 MS. MIRANDA: And that's what I was going
15 to clear up but I didn't want to interrupt. Sorry.

16 MR. DOYLE: This is -- this is --

17 MR. RYTTING: Please --

18 THE WITNESS: My subpoena says Prible.

19 MR. RYTTING: We have -- we have an hour to
20 go or so. Let's get it done.

21 MR. DOYLE: I'm sorry?

22 MR. RYTTING: Just make simple objections.
23 You can say, "Beyond the scope of" --

24 MR. DOYLE: Well, here -- here's -- here's
25 the problem, James, is that if it relates to the gang

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1 of -- or whatever you call it -- the circle of snitches,
2 that's one thing, but you're talking about a
3 completely -- another habeas case that -- that was not
4 the subject of the subpoena.

5 MR. RYTTING: All right. Then you have
6 a -- then you have a relevancy objection, and that's
7 about it, but they're not permissible. So --

8 MR. DOYLE: Well, no. I think that we --
9 we have an objection to, you know, going forward on this
10 stuff.

11 MR. RYTTING: No. No. I mean, what is the
12 objection?

13 MR. DOYLE: This is not the subject matter
14 in which she was subpoenaed to be here.

15 MR. RYTTING: Okay. Then you're not
16 saying -- then you're saying it's not relevant and we'll
17 move on.

18 MR. DOYLE: No, it's not -- it's not
19 relevant to the subject matter of the subpoena.

20 MR. RYTTING: You don't get to make that
21 call.

22 MR. DOYLE: Well, I get to --

23 MR. RYTTING: So --

24 MR. DOYLE: I get to protect my client.

25 MR. RYTTING: From harassing --

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1 MR. DOYLE: So, what --

2 MR. RYTTING: From harassing -- from
3 harassing questions.

4 MR. DOYLE: That's exactly what's --

5 MR. RYTTING: But these aren't.

6 MR. DOYLE: Thank you, James.

7 MR. RYTTING: These aren't.

8 MR. DOYLE: Yeah, it is.

9 MR. RYTTING: They're just questions about
10 the case.

11 MR. DOYLE: About a different case.

12 MR. RYTTING: Okay. Let me -- let me
13 explain this. We have a theory in both cases. Our
14 theory is that -- as you know, we've raised Giglio
15 claims in both -- in both cases. Those are claims that
16 the prosecutors sponsored false testimony in both cases.
17 We have an allegation in the Prible matter. Do you
18 understand this, that there is a -- that we believe
19 there is a pattern and practice of doing so that's
20 illustrated by both of these cases? Those are the
21 allegations in the --

22 MR. DOYLE: We -- we've -- she's never
23 seen the -- she doesn't know what you're talking about.

24 MR. RYTTING: Okay. Then -- then you --
25 and neither have you, and you shouldn't be objecting to

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1 scope, and I would like to -- we can do this off the
2 record.

3 MS. SCARDINO: If we -- we can -- we can
4 keep it on the record. Let's decide right now if we're
5 going to allow the questioning to continue or if we need
6 to contact Judge Ellison.

7 MR. RYTTING: We're not --

8 MS. SCARDINO: Because this -- this
9 information has been briefed extensively in our request
10 for these depositions.

11 MR. DOYLE: So --

12 MS. SCARDINO: And it's entirely within the
13 scope is my understanding.

14 MS. MIRANDA: We're objecting to that but
15 that's why we just said it straight out and then we'll
16 take that up later. I mean, we -- we put our objection
17 on the record and then what the Court does with it -- I
18 mean, I --

19 MS. SCARDINO: Well, are we going to be
20 allowed to continue with the questioning --

21 MR. RYTTING: Yes, we are.

22 MS. SCARDINO: -- or are we going to need
23 to get the Court on the -- on the phone one more time?

24 MR. DOYLE: We're not going to get the
25 Court on the phone at 5:30 in the afternoon. I'm sorry.

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1 MR. RYTTING: Let's finish up the
2 deposition.

3 MS. SCARDINO: Let's continue.

4 MR. RYTTING: There's very little time
5 left.

6 MR. DOYLE: Let's keep it to what you say
7 the connection was.

8 MR. RYTTING: There's very little time.
9 There's very little time.

10 Q. (BY MR. RYTTING) And as in the Ronald Prible
11 case, you were given a photograph in this case of -- of
12 Mr. -- for use at trial, correct, that showed
13 Mr. Herrero with Mr. Moreno and Mr. Dominguez and
14 several other -- several other prison inmates, correct?

15 A. I remember the photograph from the Prible
16 trial.

17 Q. Okay. You also got the same -- a similar
18 photograph in the Moreno (sic) trial?

19 A. I don't remember that one.

20 Q. I'm showing you Exhibit -- and if you look
21 at -- at Exhibit 164, do you -- do you recognize the
22 person in the center of that photograph?

23 A. The first page of 164?

24 Q. Yes, the first page of 164. Yes, the first
25 page of 164.

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1 A. I can't really see the person in the center of
2 it, and I don't remember this photo.

3 Q. But you can't speak that it was -- that's
4 Hermilio Herrero?

5 A. I can't see.

6 Q. Oh, I see.

7 MR. DOYLE: Can we explain on the record
8 she had surgery a week ago, and so, she -- it's getting
9 worse all day.

10 MR. RYTTING: We may have to --

11 MR. DOYLE: She's called the doctor while
12 we had a break.

13 MR. RYTTING: All right. We may have to
14 continue the deposition since I can't show exhibits to
15 her.

16 THE WITNESS: I've been reading all day,
17 sir.

18 Q. (BY MR. RYTTING) Now, in your closing remark,
19 you refer to these people as members of All Houston. Do
20 you remember that?

21 A. I don't know if I was talking about these
22 people in this picture.

23 Q. But these -- these were part of the All Houston
24 Group?

25 A. I don't know who these people are in this

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1 picture. I don't remember this picture.

2 Q. You don't remember that it was introduced at --
3 in the trial?

4 A. I don't. If you want to show me the exhibit
5 with my writing on it with the State's exhibit number,
6 then --

7 Q. Okay. Did you have any information that
8 Mr. Herrero, that you can recall, was a member of any
9 other prison organization other than what was called the
10 All Houston Group at trial?

11 A. Yes.

12 Q. You did have other information?

13 A. I remember another name, yes. I don't remember
14 what it was.

15 Q. It was some other group.

16 A. There was another name that they used. I don't
17 remember the name.

18 Q. But at trial, you didn't introduce any evidence
19 about any other organization that Mr. Herrero was a
20 member of other than All Houston Group, correct?

21 A. I remember them talking about another name. I
22 don't know if they meant it was the same group with a
23 different name or a different group.

24 Q. And --

25 A. There was another name discussed.

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1 Q. In other words -- and, in fact, you -- if you
2 read your opening argument, it was -- it indicates that
3 as a member -- as the leader -- and he was the leader
4 for a while of All Houston Group -- that that is how he
5 exercised his control and power over other inmates, is
6 that -- does that sound familiar, that he was a leader
7 of this group and could command, if necessary, use of
8 force?

9 A. Yes.

10 Q. Okay. That sounds -- okay. All right.

11 And you realize that we deposed Rafael
12 Dominguez in this case?

13 A. I don't know who all you deposed.

14 Q. As Tina can confirm we did. And the testimony
15 of -- I can have you read the testimony of Rafael
16 Dominguez but if he testified that Mr. Herrero's role as
17 the -- as the leader of the All Houston Group was
18 essentially to be a mediator between conflicting groups
19 in prison, would that change your picture --

20 A. Not necessarily.

21 Q. -- of All Houston?

22 A. No.

23 Q. And if he said that Mr. -- he didn't consider
24 Mr. -- he -- he was -- actually claimed Mr. Herrero
25 threatened him and made him show him his PSI at trial.

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1 A. Who is "he"?

2 Q. Rafael Dominguez. Do you recall that
3 testimony?

4 A. Say the question again.

5 Q. Do you recall that Rafael Dominguez testified
6 at trial that he had to show Mr. Herrero his PSI?

7 A. I remember that.

8 Q. Okay. And the reason -- and he had to do it --
9 and he had to doctor his PSI, just like Jesse Moreno
10 claimed that the had to doctor his PSI. Do you remember
11 that?

12 A. Not specifically, no.

13 Q. They had to excise evidence that they
14 cooperated with the government. Do you remember
15 testimonies along those lines?

16 A. I don't remember the details of the case.

17 Q. Okay. One of the things that you impressed
18 upon the jury, I believe, was that Mr. Moreno's and
19 Mr. Dominguez's testimony was consistent with the
20 physical evidence; isn't that correct?

21 A. Yes.

22 Q. And that is how they could be assured that it
23 was -- one way that they could be assured that it is
24 accurate; isn't that correct?

25 A. Yes.

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1 Q. And among the -- some of the evidence that you
2 claim showed that they were testifying accurately was
3 blood evidence, for example, correct?

4 A. I don't remember all the evidence.

5 Q. You don't remember? You don't remember having
6 Curtis Brown testify about the blood evidence that
7 flowed down from the gaping wound in Guajardo's neck?

8 A. I haven't seen the transcript, and the trial
9 was 15 years ago.

10 Q. Did you review the -- in preparation for this
11 deposition or at any time, did you review the affidavit
12 that Tommy Brown, former -- an ME -- a former ME in
13 Harris County, filed in this case?

14 A. No.

15 Q. You have not? All right. Let's see.

16 And I believe Gretchen asked you early on
17 about testimony in the Herrero case that the victim was
18 beaten by a hammer?

19 A. I don't remember her asking me that.

20 Q. Okay. Do you recall that that was part of the
21 testimony?

22 A. I do.

23 Q. And the claim was that Herrero slit the man's
24 throat and then dragged him to the back of the van and,
25 because he was still alive, beat him in the face with a

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1 hammer?

2 A. I don't know that that's the exact order of
3 everything. I don't remember.

4 Q. All right. And having prosecuted the Jason
5 Morales case, you know that Moreno was involved in a
6 robbery in which a victim was a beaten with a hammer,
7 correct?

8 A. I don't remember how the victim was killed in
9 Jason Morales. I don't remember the facts of that case.

10 Q. Okay. But in the file in that case, in your
11 file, we have police reports that indicate that
12 Mr. Moreno was part of what was called The Little Red
13 Gang. Do you remember that?

14 A. I do not remember that.

15 Q. You don't remember that? And you don't
16 remember that Mr. Moreno was actually taped en route to
17 a -- and this Little Red Gang -- Gang was conducting
18 home envisions and home robberies. Do you remember
19 that?

20 A. Do you want to show it to me? Because I don't
21 remember Jason Morales and the specifics. That was 20
22 years ago.

23 Q. Yeah. I think given your eyesight, this is
24 going to be a problem.

25 A. I can read better than I can see those pictures

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1 and the pink message slips.

2 Q. This is not -- it will be useless to do it
3 since it's not tabbed.

4 But at -- at -- at trial, Dan Cogdell tried
5 to cross examine Mr. -- Mr. Moreno on his involvement in
6 a home invasion in which a hammer was used, and there
7 were objections made. Do you recall that?

8 A. I do not.

9 Q. Okay. And one of the reasons that -- and --
10 and the Court excluded -- excluded or prevented Dan
11 Cogdell from going into the -- into the robbery in which
12 a hammer was used, the robbery that was conducted by The
13 Little Red Gang, according to the police report, based
14 on Mr. Moreno's representation he had nothing to do with
15 it. Do you remember -- you probably don't recall that
16 either?

17 A. There are so many questions in that and
18 assumptions in that question, I don't even know where to
19 start.

20 Q. You don't even recall -- do you recall that at
21 all?

22 A. What?

23 Q. Whether Dan Cogdell attempted to introduce
24 evidence into the trial about The Little Red Gang and
25 its involvement in a home invasion in which a hammer was

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1 used to beat victims but could not?

2 A. I do not remember. The trial transcript will
3 speak for itself, and the trial was 20 years ago.

4 Q. Okay. And one of the reasons why he was not
5 then -- I can show you Page 57 and what's been marked as
6 Exhibit 70, Page -- there you go.

7 MS. SCARDINO: My notes are on that one, I
8 think. I believe my notes are on that one.

9 MR. DOYLE: I don't see any notes.

10 MS. SCARDINO: It's on the second page.
11 No. It's just -- it's just highlights.

12 MR. DOYLE: I'll -- I'll ignore them.

13 MS. SCARDINO: It's just highlights. Sure.

14 Q. (BY MR. RYTTING) Are you finished reading?

15 A. Oh, yes. I'm sorry. I was waiting on you.

16 Q. Okay.

17 A. We can barely hear you, and now the chair is in
18 the way, so, you're going to need to talk louder.

19 Q. Yes. Sorry about that.

20 So, does that refresh your memory that he
21 was -- that there was this issue at trial about whether
22 Dan Cogdell could introduce evidence about a robbery or
23 a crime in which a hammer was -- that Mr. Moreno -- that
24 he claimed Mr. Moreno knew about in which a hammer was
25 used?

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1 A. I've read the transcript. It doesn't refresh
2 my memory about the specifics of what they're talking
3 about, no, sir.

4 Q. I guess the transcripts will speak for
5 themselves, that if they say that -- that you -- the
6 Court ruled on the basis of Mr. Moreno's allegation that
7 he knew nothing about the robbery in which a hammer was
8 used, that he knew nothing about it, you can't dispute
9 that?

10 MR. DOYLE: Objection.

11 MR. RYTTING: Sure.

12 A. The transcript speaks for itself.

13 Q. (BY MR. RYTTING) Okay. And police did
14 discover that he was actually taped -- the evidence will
15 show, I think, that the police taped Jesse Moreno --

16 A. Who are we talking about?

17 Q. Police, HPD taped Jesse -- Jesse Moreno, using
18 an informant, en route to the robbery in which a hammer
19 was used to beat the victim.

20 A. I don't know what you're talking about.

21 Q. You don't? You haven't heard that?

22 A. You're confusing cases or I'm confused.

23 Q. You didn't -- that's a case that you're not
24 familiar with?

25 A. You said HPD.

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1 Q. So, it's investigated by Harris County?

2 A. The ones that I know about were.

3 Q. Let me see. I guess we can mark this.

4 So, you didn't know that H -- that HPD was
5 investigating Jesse Moreno's activities -- I mean --
6 yeah, Jesse Moreno's activities as part of The Little
7 Red Gang?

8 A. That's an assumption that I don't know enough
9 about to answer.

10 Q. You don't know. Okay. You don't know. All
11 right. You don't recall if that was the case.

12 MR. RYTTING: I'll just introduce this. Do
13 we have a sticker here? I'm almost finished. We're up
14 to 300. This will be 301.

15 Q. (BY MR. RYTTING) And this was produced by
16 Brian Rose, I'll represent.

17 MR. DOYLE: If you've got a -- if you've
18 got an extra one, I'll mark it, James. You don't have
19 to do it.

20 MR. RYTTING: I'll do it.

21 MR. DOYLE: Thanks.

22 MS. MIRANDA: And I'll take one as well.

23 MR. RYTTING: All right.

24 Q. (BY MR. RYTTING) That is an HPD report,
25 correct?

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1 A. This is an HPD report, yes.

2 Q. And I'll represent that was produced when we --
3 from an open records request --

4 A. For?

5 Q. -- from Harris County in the Jason Morales case
6 for the file.

7 A. In the Jason Morales case?

8 Q. Yes, in the Jason Morales case as part of the
9 file.

10 A. Okay.

11 Q. I'll mark this as 302, and this is going to be
12 the statement of Tommy Brown. Exhibit 302 is the
13 statement of Tommy Brown. Have you read -- you say you
14 haven't read that?

15 A. I have not.

16 Q. Take your time and look through it.

17 MS. MIRANDA: James, could I have one? And
18 while she's looking at that, can I ask where are we at
19 with time?

20 THE VIDEOGRAPHER: 20 minutes.

21 MR. RYTTING: 20 minutes. We'll finish.

22 A. Okay.

23 Q. (BY MR. RYTTING) Have you finished reading the
24 whole thing?

25 A. No, I didn't read the whole thing.

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1 Q. Okay. Let's get down to -- if you'll turn
2 to --

3 A. Get down to what?

4 Q. If you'll turn to -- let's see -- paragraph 16.
5 And you realize that Tommy Brown did the autopsy in this
6 case, that he actually did the autopsy?

7 A. Yes, sir.

8 Q. Okay. And it says, "Based on review of the
9 autopsy report and autopsy photos and crime scene
10 photos, it is my forensic opinion that Guajardo received
11 numerous blunt trauma injuries before the cutting wound
12 to the neck was administered. Testimony that Guajardo
13 was only choked before he had his throat slit and that
14 the lacerating injuries seen on his scalp were inflicted
15 after this mortal injury cannot account for the
16 significant -- significant trauma to the back and front
17 of Guajardo's torso seen in autopsy photos, nor is it
18 consistent with premortem lacerating injuries to
19 Guajardo's lip, with abrasions to his shoulder, bruising
20 to his face and neck or what appears to be a stab wound
21 to his -- to his neck. The lack of blood evidence on
22 lower garments, including the white belt, pants and
23 white socks, is inconsistent with testimony that
24 Guajardo had his throat slashed in the confines of a
25 van."

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1 And your -- you realize that your witness
2 is simply testifying that there was an argument, that
3 Herrero grabbed the victim --

4 A. Who are you calling my witness?

5 Q. Moreno and -- and Dominguez both testified
6 that --

7 A. Are we still talking about this?

8 Q. No. I'm talking about their testimony. This
9 is a -- this is -- I'll just ask you a question.

10 This directly conflicts with the testimony
11 of Mr. Moreno and Dominguez, does it not?

12 A. I would refer -- I would refer you back to
13 paragraph 15 in this same document where it says, by
14 Tommy Brown, "I have been asked to comment on the trial
15 testimony as related to me by Herrero's attorney," and
16 since that -- that is you and you're the one that
17 related whatever facts you may have to Dr. Tommy Brown,
18 I don't really care what he had to say after he talked
19 to you because I know how you relate facts.

20 Q. Okay. Okay. So, the facts that I related to
21 Mr. Brown was that the testimony at trial was that there
22 was an argument, that Herrero grabbed Mr. -- in a van,
23 in a moving van --

24 A. Does it really matter what you told Tommy
25 Brown? Because I can't comment on what he said. I

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1 wasn't there. And I don't -- I wouldn't believe what
2 you told me you told him anyway.

3 Q. Okay. Well, does the -- do you recall the
4 testimony at trial?

5 A. I do not. The trial transcript can speak for
6 itself.

7 Q. Okay. So, if the trial transcript says that
8 both Dominguez and Moreno testified that the way -- the
9 manner and means in which Mr. Herrero (sic) was killed
10 was that he was first grabbed from behind and choked and
11 then Herrero took a knife out of his pocket and slit his
12 throat, then afterwards he then dragged him to the back
13 of a van and beat him over the head with a hammer to
14 make sure he was dead, that -- you don't recall that as
15 being the gist of these -- these two defendants'
16 testimony?

17 A. That is not exactly what they said, as I
18 recall.

19 Q. Okay. What else do you recall?

20 A. Well, you said he pulled a knife out after he
21 slit the throat, so, that couldn't happen.

22 Q. No. He pulled a knife out and then -- and then
23 slit his throat.

24 A. Well, that's not what you just said.

25 Q. Okay. All right.

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1 A. You just said that they testified in such a way
2 that's impossible for it to have happened.

3 Q. So --

4 A. Once again, your rendition of the facts isn't
5 quite accurate.

6 Q. Sure. So, pulled the knife out and then slit
7 his throat, the knife out of their pocket. So, we'll
8 make that correction. Do you -- does that sound like
9 the gist of their testimony?

10 A. The gist of it but not necessarily in that
11 order.

12 Q. They didn't mention -- they didn't -- they
13 didn't tell you that Herrero was beaten -- I mean, that
14 Mr. Guajardo was beaten badly, that he was beaten all
15 over his torso?

16 A. I don't remember what they said about a
17 beating. I don't remember if there was a beating.

18 Q. They didn't say any -- they didn't say anything
19 at all about it?

20 A. I don't remember anything -- I don't remember
21 what happened with the beating.

22 Q. But the autopsy evidence shows that there was a
23 severe beating and, according to Dr. Brown, the severe
24 beating preceded the wound --

25 A. The trial --

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1 Q. -- wound to the throat; isn't that correct?

2 A. The trial transcript will speak for itself.

3 Q. But -- but that would conflict with the trial
4 transcripts in which there's no mention of any beating,
5 there's no mention of bruises all over the torsos,
6 there's no mention of lacerations on the shoulder, on --
7 on the -- on ears, all over the scalp, would it -- would
8 it -- would it not?

9 A. I can't argue about what the trial transcript
10 says when I don't know what it said and the trial was 15
11 years ago.

12 Q. And you -- do you recall that Dr. Wolf was an
13 ME in this case?

14 A. I didn't remember that.

15 Q. And that he testified?

16 A. I don't -- I didn't remember that either. I'm
17 not going to argue with you. I just didn't remember.

18 Q. You don't? Okay. So, you don't recall. And,
19 in fact, you didn't have -- did you -- did you prepare
20 Dr. Wolf for his testimony?

21 A. I would have met with him ahead of time, yes.

22 Q. Would you have asked him about --

23 MR. RYTTING: Can I have this marked as
24 304, I think -- no. 303.

25 Q. (BY MR. RYTTING) Here's 303. If you would,

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1 just quickly go through the autopsy. These are autopsy
2 photos from the Morales -- from the Guajardo murder.
3 Here you go.

4 A. These are not the ones I offered into evidence.
5 They're not because my stickies would have been on the
6 front of the pictures, not the back.

7 Q. No, they're not the ones that you offered in.
8 They're copies -- they're copies of evidence in the --
9 they're copies of evidence in the -- in the file that
10 was produced to us. Whether they were all introduced, I
11 don't know. These were --

12 MR. DOYLE: Do you have an extra --

13 Q. (BY MR. RYTTING) -- copies from your file.

14 MR. DOYLE: James, do you have an extra?
15 Thank you.

16 Q. (BY MR. RYTTING) They're from your file in
17 this case. They were produced by your former office.

18 And if you turn to the -- let's see -- to
19 some of the pictures of the -- of the chest, for
20 example, this would be -- hold on. I don't know how
21 many pages back in this -- in this document. 1, 2, 3,
22 4, 5, 6, 7. I think it's the 8th or 9th page. That
23 one.

24 A. Okay.

25 Q. And it shows -- did you ask Dr. Brown about

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1 these injuries or these insults to this -- do you
2 recall --

3 A. I thought you said Dr. Wolf testified.

4 Q. I mean, Dr. Wolf. Dr. -- did you have him
5 address any of these photographs and explain their
6 significance?

7 A. I'm -- I'm confused.

8 Q. Do you remember -- do you remember at all
9 talking to Dr. Wolf about any of these photographs?

10 A. You're asking me if I remember in my pretrial
11 interview with Dr. Wolf --

12 Q. Yes.

13 A. -- from 15 years ago --

14 Q. I know.

15 A. -- questions about photographs that I didn't
16 offer into evidence.

17 Q. Okay. Let's -- let's make this very simple. I
18 mean, if it's no, it's no. I don't blame you for not
19 remembering.

20 A. I don't remember.

21 Q. I just asked you.

22 A. I don't remember.

23 Q. Would you -- was it part of your practice to
24 ask the ME about the significance of autopsy photographs
25 and what they mean?

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1 A. Yes.

2 Q. Okay. And would there be any reason not to
3 have them address our explain injuries seen elsewhere on
4 the body besides the head and neck of this victim?

5 A. Ask the question again.

6 Q. Would there be any reason not to have him
7 address or explain to you the significance of injuries
8 seen on the torso, on the back, on the shoulders of this
9 victim?

10 A. If I don't remember what he testified to, how
11 can I answer in the negative?

12 Q. I just wondered would you have -- would you go
13 over the entire -- all the injuries that this individual
14 received -- received?

15 A. That would have been my practice, yes.

16 Q. That would have been your practice. Okay. And
17 you see in these -- in these photographs, for example,
18 let me show you -- make it easier -- a picture of a
19 torso and a -- and his back.

20 A. Okay.

21 Q. And your -- your witnesses did not testify that
22 the man was beaten and stomped in the back or hit in the
23 torso or received any injury that would have bruised his
24 body.

25 A. I don't remember the specifics of what they

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1 said happened with the injuries.

2 Q. Okay. But you would have asked Dr. Wolf
3 perhaps something about a photograph like this, correct?

4 A. I don't remember if I did.

5 Q. And if you read that -- again, if you read
6 doctor -- one of the things, he didn't just testify
7 on -- didn't just make statements based -- let's make it
8 clear -- based on my representation about what the
9 testimony was at trial, he also reviews the autopsy
10 report and reviewed the photographic evidence in this
11 case.

12 A. Was he given the trial transcript?

13 Q. No, he wasn't given the trial transcript.

14 A. Why not?

15 Q. He was -- he was -- but -- I don't know why
16 not. That's --

17 A. Well, you're the one that interviewed him. Why
18 didn't you give him the trial transcript, too?

19 Q. That's a question for you when you depose me,
20 not a question for this deposition. Okay? Okay?

21 So -- and if you -- based on the autopsy
22 photos, if you read his -- his -- his affidavit and
23 based on his autopsy report, he came to the conclusion
24 that the man was -- died in a completely different way
25 than testified at trial.

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1 A. I don't understand the question, my conclusion.

2 Q. Okay. I'll -- I'll strike that one.

3 Just to end up, just because I'm curious,
4 you mentioned that there are a number of lies in the --
5 in the application -- or in the petition -- Prible's
6 petition, that there are some lies.

7 A. I did.

8 Q. Okay. And that means there's -- there must be
9 some faults in that petition that you think are false,
10 correct?

11 A. I do.

12 Q. Okay. And can you name one or two of them that
13 you think are false?

14 A. There's not much truth in it.

15 Q. Okay. Can you name one that stands out as
16 being false?

17 A. Well, the overarching lie is that I
18 orchestrated a ring of informants from the Beaumont
19 federal prison system. That is a lie --

20 Q. Okay. All right. I'm just --

21 A. -- that you made up --

22 Q. No. No.

23 A. -- and you theorized and you pieced together
24 and you represented to a federal judge and defamed my
25 reputation, and it's completely wrong and unethical and

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1 false and --

2 Q. What is the basis for you thinking -- for your
3 belief that we've been -- we don't believe that?

4 A. You have no evidence to support that. That is
5 a lie. You have not one shred of evidence to support it
6 from anybody.

7 Q. Okay.

8 A. It didn't happen.

9 Q. Did you not -- did you not read the transcript
10 of the interview with Carl Walker?

11 A. I don't even know Carl Walker is, and he's a
12 bigger liar than Nathan Foreman.

13 Q. Okay.

14 A. Your own investigative interview of Carl Walker
15 was a joke --

16 Q. Okay. So --

17 A. -- if you analyze the interview itself.

18 Q. So --

19 A. Read it carefully.

20 Q. I'm just saying --

21 A. He didn't even know my name. He wasn't even
22 sure I was a female.

23 Q. Okay.

24 A. And you want to pretend like Carl Walker is the
25 crux of your conspiracy of informants that I

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1 masterminded and orchestrated --

2 Q. Did you --

3 A. -- in federal prison?

4 Q. Did you read -- did you read his -- the
5 transcript of his interview?

6 A. I read -- it was about 6 pages long.

7 Q. No, it was about 30 pages long.

8 A. Maybe I read 30. I don't remember. It was the
9 one where he was interviewed by --

10 Q. I just asked -- Ms. Siegler, I just asked you a
11 question.

12 MR. DOYLE: Let her -- let her finish.

13 Q. (BY MR. RYTTING) Did you read it?

14 A. I think I did, yes.

15 Q. Okay. And you've also read the affidavit of
16 Nathan Foreman?

17 A. I don't know if I read an affidavit. How long
18 is that one?

19 Q. That's about four pages in the Prible case --

20 A. I think I read that. I think I read that.

21 Q. -- and three pages in the Herrero case, and you
22 commented on that in your own affidavit.

23 A. Say that again.

24 Q. And you commented on his affidavit in the -- in
25 the Herrero case.

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1 A. Okay. That's the affidavit you're talking
2 about, right?

3 Q. So, I have -- so, there is evidence. You --
4 you disagree with the credibility of that evidence,
5 don't you?

6 A. No, I disagree with your making a false
7 impression to a federal judge in a case this important
8 and making up lies and saying that I orchestrated a ring
9 of informants in a federal prison system and that I told
10 them what to say and caused them to lie in not just one
11 or two or three but four different cases. That is a
12 lie.

13 Q. No. There was -- there was -- the claim was
14 that you did -- that you were aware of a ring of
15 informants and that --

16 A. And I told them what to say and I told them to
17 lie --

18 Q. That you were aware of a ring of informants.
19 Wasn't --

20 A. -- and I fed them information.

21 Q. Wasn't that -- wasn't that the petition?

22 A. It was a whole lot more than that and you know
23 it.

24 Q. And that -- that some of the key facts were
25 learned from you by -- according to our witnesses and

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1 our affidavits and our taped statements?

2 A. Your witnesses' affidavits were lies.

3 Q. Okay. You can take that position, and it
4 contradicts what you -- in both cases, it contradicts
5 precisely what you claim the State's -- the real truth
6 is and what the State's -- what the State has argued;
7 isn't that correct?

8 A. You have not one shred or iota or piece of
9 credible evidence from a credible witness that supports
10 any of these allegations.

11 Q. And these are the type of witnesses that you
12 used to put people on death row?

13 A. I'm calling you a liar, sir.

14 Q. And I'm calling you one.

15 A. I didn't go to a federal court --

16 Q. You used -- you used Michael Beckcom to put
17 Jeffrey Prible on death row.

18 A. That's not the only thing that put Jeffrey
19 Prible on death row, and you know it.

20 Q. You used Moreno, who we now know lied to you.

21 A. For Prible?

22 Q. No. In the -- in the Herrero case, who we now
23 know lied to you.

24 A. He did not lie.

25 Q. If the evidence showed that he was put in the

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1 hole not because of Herrero but because he was running
2 drugs for the Texas syndicate and was transferred to
3 Liberty County not for Herrero -- because of Herrero but
4 because he was involved in an investigation for BOP and
5 needed protection because of that, then he lied to you?

6 A. I disagree.

7 Q. Do you know what a lie means?

8 A. Yeah.

9 Q. Okay.

10 MR. RYTTING: I'll pass the witness.

11 MS. SCARDINO: I -- I simply have two
12 housekeeping measures. I wanted Ms. Siegler to read
13 these last work product notes that were produced in
14 camera -- or -- I'm sorry -- ordered produced by the
15 Court in camera. So we don't put words into her mouth,
16 I just want to know what these --

17 MR. DOYLE: If we have time.

18 MS. SCARDINO: Okay. What's the time?

19 THE VIDEOGRAPHER: Two minutes.

20 MS. SCARDINO: Okay.

21 THE WITNESS: What does that mean, ordered
22 produced by the Court in camera?

23 MS. SCARDINO: The -- the Court reviewed
24 them in camera, the work product and then ordered these
25 to be produced.

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FURTHER EXAMINATION

Q. (BY MS. SCARDINO) So, if you could start with that first page.

A. At the top it says, "Prible," circled, "Montgomery County." I can't read that word. "To see if Eddie" --

Q. Is that "Gomez"?

A. I think that's "Gomez."

I can't read the line under it. "Made -- called," underneath the line, "Charged with five bank robberies and" -- or "six" -- I can't tell -- "banks." I don't know what that says after it. I don't know what that says.

Next line, "Here comes Prible." I can't read that. "Defendant dropped. Murder-no evidence. People" -- I don't know if that says "cut" or "out him." I can't read the rest.

Q. Do you recall when you took these notes?

A. No. I don't know where this is from. I don't know where this is from.

Q. Okay.

MS. SCARDINO: Due -- due to the witness' eyesight today, perhaps it would be best if we allowed you to look at these work product notes --

A. It's not the eyesight.

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1 MS. SCARDINO: -- and write --

2 A. It's the copy. It's not the eyesight. I can't
3 read my own writing.

4 Q. (BY MS. SCARDINO) Okay. So, you need a more
5 legible copy than the one that --

6 A. No. It won't matter. It's my scratchy
7 handwriting is the problem.

8 Q. So, your testimony is you can't read your own
9 handwriting?

10 A. It happens a lot because I write so fast,
11 trying to take notes, and I can't do a good job, which
12 is why I end up not taking notes, because it doesn't do
13 me any good.

14 Q. Okay.

15 MR. DOYLE: I think we're at the time.

16 MS. SCARDINO: That's -- we'll pass the
17 witness.

18 MS. MIRANDA: Can we just have 2 minutes to
19 decide if we even want to ask questions?

20 MR. DOYLE: Uh-huh.

21 THE VIDEOGRAPHER: The time is 6:18. We're
22 off the record.

23 (Short recess.)

24 THE VIDEOGRAPHER: This is the beginning of
25 file 11. The time is 6:21. We're on the record.

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EXAMINATION

Q. (BY MS. MIRANDA) Ms. Siegler, I just wanted to clear up one thing really quickly. I believe earlier in response to a question, you testified that you reviewed the petition in the Herrero case for this deposition and -- is that correct?

A. I don't know what I reviewed. All I've ever seen are what you sent me. That's all I have.

Q. Okay. And do you recall what I sent you?

A. No.

Q. Okay. If I were to represent to you that I sent you the petition in the Prible case, would you have any reason to disagree with that?

A. Isn't that what I said?

Q. Yes.

A. Petition in the Prible case.

Q. No. You said the petition in the Herrero case.

A. Oh, no. No. No. I meant Prible. I'm sorry.

Q. Okay. That was the only thing I wanted to clear up because I knew that was a misstatement. So --

A. Yes. I said it wrong.

MS. SCARDINO: Okay. That's the only thing you wanted to clear up?

MS. MIRANDA: Yes.

FURTHER EXAMINATION

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1 Q. (BY MS. SCARDINO) Okay. And we haven't asked
2 you if you brought documents responsive to the subpoena
3 that was served on this case, which would have included
4 any correspondence that you had with Ms. Miranda. Did
5 you bring any documents?

6 A. I did not.

7 Q. Okay. Do you have any documents in your
8 possession?

9 A. No.

10 Q. You didn't -- well, you just said you received
11 some information from --

12 A. It's her E-mail, whatever she E-mailed me.

13 Q. Okay. So, beyond that, you don't have anything
14 else that would have been responsive to that subpoena?

15 A. I do not.

16 Q. Okay.

17 MS. SCARDINO: So, Tina, if I could get
18 from you a copy --

19 MS. MIRANDA: I'll give you the E-mails
20 that I have.

21 MS. SCARDINO: -- of that E-mail.

22 MS. MIRANDA: Yeah.

23 MS. SCARDINO: Thank you very much.

24 MS. MIRANDA: Uh-huh.

25 MS. SCARDINO: Okay.

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1 MR. DOYLE: I didn't ever get a subpoena.
2 I don't know that she did but --

3 THE WITNESS: I got one.

4 MR. DOYLE: Okay.

5 MS. SCARDINO: Okay.

6 THE VIDEOGRAPHER: The time is 6:23. We're
7 off the record.

8 (Whereupon, at 6:23 p.m.
9 the deposition was concluded.)
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1 CHANGES AND SIGNATURE

2 WITNESS NAME: KELLY SIEGLER

3 DATE OF DEPOSITION: 10-17-17

4 PAGE	LINE	CHANGE	REASON
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I, KELLY SIEGLER, have read the foregoing
deposition and hereby affix my signature that same is
true and correct, except as noted above.

KELLY SIEGLER

THE STATE OF _____)

COUNTY OF _____)

Before me, _____, on this day
personally appeared KELLY SIEGLER, known to me (or
proved to me under oath or through _____)
(description of identity card or other document) to be
the person whose name is subscribed to the foregoing
instrument and acknowledged to me that he executed the
same for the purposes and consideration therein
expressed.

Given under my hand and seal of office, this
_____ day of _____, _____.

NOTARY PUBLIC IN AND FOR
THE STATE OF _____

My commission expires: _____

____No Changes Made _____Amendment Sheet(s)

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RONALD JEFFREY PRIBLE vs LORIE DAVIS

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RONALD JEFFREY PRIBLE, JR.	*
Plaintiff	*
	*
VS.	* CIVIL ACTION NO.
	* 4:09-cv-01896
LORIE DAVIS, DIRECTOR,	*
TEXAS DEPARTMENT OF	*
CRIMINAL JUSTICE,	*
INSTITUTIONAL DIV.	*
Defendants	*

REPORTER'S CERTIFICATION OF THE ORAL
DEPOSITION OF KELLY SIEGLER
10-17-17

I, Edith A. Boggs, a Certified Shorthand
Reporter in and for the State of Texas, hereby certify
to the following:

That the witness, KELLY SIEGLER, was duly
sworn by the officer and that the transcript of the oral
deposition is a true record of the testimony given by
the witness;

That the original deposition was delivered to
James Rytting, Esquire;

That a copy of this certificate was served on
all parties and/or the witness shown herein on
_____.

I further certify that pursuant to FRCP Rule
30(e)(2) that the signature of the deponent:
____X____ was requested by the deponent or a party
before the completion of the deposition and that the
signature is to be before any notary public and returned
within 30 days from date of receipt of the transcript.
If returned, the attached Changes and Signature Page
contains any changes and the reasons therefore:
_____ was not requested by the deponent or a
party before the completion of the deposition.

I further certify that I am neither counsel
for, related to, nor employed by any of the parties or
attorneys in the action in which this proceeding was
taken, and further that I am not financially or

KELLY SIEGLER
RONALD JEFFREY PRIBLE vs LORIE DAVIS

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1 otherwise interested in the outcome of the action.

2
3 Certified to by me on this, the 27th day of
4 October, 2017.

5 *Edith A. Boggs*

6 Edith A. Boggs, CSR No. 3022
7 Firm Registration No. 03
8 Expiration Date: 12-31-2017
9 1001 McKinney, Suite 560
10 Houston, Texas 77002
11 Ph. No.: (713) 524-4600
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KELLY SIEGLER
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1 COUNTY OF HARRIS)

2 STATE OF TEXAS)

3
4 I hereby certify that the witness was notified
5 on _____ that the witness has 30 days or
6 (____ days per agreement of counsel) after being
7 notified by the officer that the transcript is available
8 for review by the witness and if there are any changes
9 in the form or substance to be made, then the witness
10 shall sign a statement reciting such changes and the
11 reasons given by the witness for making them;

12 That the witness' signature was/was not
13 returned as of _____.

14 Subscribed and sworn to on this, the 27th day
15 of October, 2017.

16
17
18
19
20 _____
21 Edith A. Boggs, CSR No. 3022
22 Firm Registration No. 03
23 Expiration Date: 12-31-2017
24 1001 McKinney, Suite 560
25 Houston, Texas 77002
Ph. No.: (713) 524-4600

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Reference No.: 659784

Case: RONALD JEFFREY PRIBLE vs LORIE DAVIS

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

KELLY SIEGLER

NOTARIZATION OF CHANGES
(If Required)

Subscribed and sworn to on the _____ day of

_____, 20____ before me,

(Notary Sign)_____

(Print Name) _____ Notary Public,

in and for the State of _____

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Reference No.: 659784

Case: RONALD JEFFREY PRIBLE vs LORIE DAVIS

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Reference No.: 659784

Case: RONALD JEFFREY PRIBLE vs LORIE DAVIS

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